2 6th 77

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 702.

OCTOBER TERM, A. D. 1875.

ISAAC TAYLOR, Collector of Peoria County, and others,
APPELLANTS,

—*vs.*—

JAMES F. SECOR and WILLIAM TRACY,
APPELLEES.

BRIEF FOR APPELLANTS,

—BY—

Lyman Trumbull,

OF COUNSEL FOR COLLECTOR OF PEORIA COUNTY.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 702.

OCTOBER TERM, A. D. 1875.

ISAAC TAYLOR, Collector of Peoria County, and others,
APPELLANTS,

—*vs.*—

JAMES F. SECOR and WILLIAM TRACY,
APPELLEES.

BRIEF FOR APPELLANTS,

—BY—

Lyman Trumbull,

OF COUNSEL FOR COLLECTOR OF PEORIA COUNTY.

CHICAGO:

BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.

1876.

STATEMENT OF CASE.

The appellees, trustees for the holders of bonds of the Toledo, Peoria & Warsaw Railway Company, which owned and operated a railroad across the State of Illinois, after application to the officers of said railway company, and their refusal to act, filed a bill against said railway company, and the collectors of taxes in the various counties of the State through which said railroad runs, to restrain said company from paying, and said collectors from collecting the taxes assessed against the railway company for the year 1873. To a proper understanding of the questions raised, reference is necessary to the following provisions of the constitution and statutes of the State. Article IX, §§ 1 and 9 of the constitution of Ill. declare :

"The General Assembly shall provide such revenue as "may be needful by levying a tax, by valuation, so that "every person and corporation shall pay a tax in propor- "to the value of his, her, or its property—such value to be "ascertained by some person or persons, to be elected or "appointed in such manner as the General Assembly shall "direct, and not otherwise ; but the General Assembly "shall have power to tax peddlers, auctioneers, brokers, "hawkers, merchants, commission merchants, showmen, "jugglers, inn keepers, grocery keepers, liquor dealers "toll bridges, ferries, insurance, telegraph and express in- "terests or business, vendors of patents, and persons or "corporations owning or using franchises and privileges, "in such manner as it shall, from time to time, direct by "general law, uniform as to the class upon which it ope- "rates."

"§ 9. The General Assembly may vest the corporate "authorities of cities, towns and villages, with power to "make local improvements by special assessment or by " special taxation of contiguous property, or otherwise. " For all other corporate purposes, all municipal corpora- " tions may be vested with authority to assess and collect " taxes ; but such taxes shall be uniform in respect to per- " sons and property within the jurisdiction of the body im- " posing the same."

"An act for the assessment of property, and for the "levy and collection of taxes," approved March 30, 1872, in force July 1, 1872, among other provisions, contains the following :

RULES FOR VALUING PERSONAL PROPERTY.

§ 3. Personal property shall be valued as follows :

First—All personal property, except as herein otherwise directed, shall be valued at its fair cash value.

Second—Every credit, for a sum certain, payable either in money or labor, shall be valued at a fair cash value for the sum so payable ; if for any article of property, or for labor, or services of any kind, it shall be valued at the current price of such property, labor or service.

Third—Annuities and royalties shall be valued at their then present total value.

Fourth—The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just ; and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act—subject, however, to such change, alteration or amendment as may be found, from time to time, to be necessary, by said board : *Provided*, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or

association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State.

WHO SHALL LIST AND WHAT LISTED.

§ 6. Personal property shall be listed in the manner following :

* * * * * * * * *

Eighth—The property of a body politic or corporate, by the president, or proper agent or officer thereof.

WHERE LISTED AND ASSESSED, AND WHAT HELD TO BE PERSONAL PROPERTY—MANNER OF LISTING.

§ 7. Personal property, except such as is required in this act to be listed and assessed otherwise, shall be listed and assessed in the county, town, city village, or district where the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, town, district, city or village where the principal office or place of business of such corporation or person is located in this State.

MANNER OF LISTING AND VALUING THE PROPERTY OF RAILROADS.

§ 40. Every person, company or corporation owning, operating or constructing a railroad in this State, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of May of the year in which it is listed.

§ 41. They shall, in the month of May of the year eighteen hundred and seventy-three, and at the same time in each year thereafter when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement or schedule showing the property held for right of way, and the length of the main, and all side and second tracks and turnouts in such county, and in each, city, town and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town or village lot,

through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statements in May next after the location of their roads. When such statements shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of May, annually, report the value of such property by the description set forth in the next section of this act, and note all additions or changes in such right of way, as shall have occurred.

§ 42. Such right of way, including the superstructures of main, side or second tracks and turnouts, and the stations and improvements of the railroad company on such right of way, shall be held to be real estate for the purposes of taxation, and denominated "railroad track," and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing —— acres, more or less, (inserting name of county, township, city, town or village boundary line of same, and number of acres, and length in feet,) and when advertised or sold for taxes, no other description shall be necessary.

§ 43. The value of the "railroad track" shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this State, except the value of the side or second track, and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located.

§ 44. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling stock." Every person, company or corporation, owning, constructing or

operating a railroad in this State, shall, in the month of May, annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, house cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars.

§ 45. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track, used or operated in such county, town, village, district or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the State of Illinois, and the number of miles of main track on which said rolling stock is used elsewhere.

§ 46. The tools and materials for repairs, and all other personal property of any railroad, except "rolling stock," shall be listed and assessed in the county, town, village, district, or city, wherever the same may be on the first day of May. All real estate, including the stations and other buildings and structures thereon, other than that denominated "railroad track," belonging to any railroad, shall be listed as lands or lots, as the case may be, in the county, town, village, district or city, where the same are located.

§ 47. The county clerk shall return to the assessor of the town or district, as the case may require, a copy of the schedule, or list of the real estate, (other than "railroad track"), and of the personal property (except "rolling stock"), pertaining to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and "personal property."

§ 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company, or corporation, running, operating, or constructing any railroad in this State, shall return to

the Auditor of Public Accounts, sworn statements or schedules, as follows:

First. Of the property denominated "railroad track," giving the length of the main and side, or second tracks, and turnouts, and showing the proportions in each county, and the total in the State.

Second. The "rolling stock," giving the length of the main track in each county, the total in this State, and the entire length of the road.

Third. Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track; the ballasting of road, whether graveled or dirt; the number and quality of buildings or other structures on "railroad track"; the length of time iron in track has been used, and the length of time the road has been built.

Fourth. A statement or schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.
2. The amount of capital stock paid up.
3. The market value, or if no market value, then the actual value of the shares of stock.
4. The total amount of all indebtedness, except for current expenses for operating the road.
5. The total listed valuation of all its tangible property in this State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts.

§ 49. If any person, company or corporation, owning, operating, or constructing any railroad, shall neglect to return to the county clerks the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor, shall be listed and assessed as other property. In case of failure to make returns to the Auditor, as hereinbefore provided, the Auditor, with the assistance of the county clerks and assessors, when he shall require such assistance, shall ascertain the necessary facts, and lay the same before the State Board of Equalization. In case of failure to make said statements, either to the county clerk or Auditor, such corporation, company or person, shall forfeit, as a penalty, not less than one thousand, nor more than ten thousand dollars for each offense, to be recovered in any proper

form of action, in the name of the "people of the State of Illinois," and paid into the State treasury.

§ 50. The Auditor shall annually, on the meeting of the State Board of Equalization, lay before said board the statements and schedules herein required to be returned to him, and said board shall assess such property in the manner hereinafter provided.

§ 51. The county clerk shall procure at the expense of the county a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the manner provided by this act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon, for which said property is liable; and at the proper time fixed by this act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use.

STATE BOARD OF EQUALIZATION.

§ 100. The State Board of Equalization shall, at the expiration of the term of office of the members now forming said board, consist of one member from each congressional district in the State, elected as hereinafter provided, and the Auditor of Public Accounts.

§ 101. The qualified electors of each congressional district shall, at the general election in November, eighteen hundred and seventy-two, and every four years thereafter, elect one of their number to serve as a member of said Board of Equalization, who shall hold his office for four years, and until his successor is elected and qualified.

§ 105. Said board shall assemble at the State capital on the second Tuesday in the month of August, annually, and examine the abstracts of property assessed for taxation in the several counties of this State, as returned to the Auditor, and shall equalize the assessments as hereinafter provided; but said board shall not reduce the aggregate assessed valuation in the State; neither shall it increase said aggregate valuation, except in such an amount as may

be reasonably necessary to a just equalization, and not exceeding one per cent. on such aggregate assessed valuation; but this rule shall not apply to railroad property.

§ 106. Said board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz: personal property; railroad and telegraph property; lands, and town and city lots; and upon such consideration, determine such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the State, as may be deemed by the board to be equitable and just—such rates being in all cases even and not fractional; and such rates, as finally determined by said board, shall not be combined.

§ 108. The State Board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the Auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located.

§ 109. Said board shall also assess the railroad property denominated in this act as "railroad track" and "rolling stock"; and said board is hereby given the power and authority, by committee or otherwise, to examine persons and papers. The amount so determined and assessed shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the Auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such "railroad track" and "rolling stock." And said clerk shall extend taxes against such values, the same as against other property in such towns, districts, villages and cities.

§ 110. The aggregate amount of capital stock of railroad or telegraph companies assessed by said board shall

be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated "railroad track" is distributed. The amount so determined shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the Auditor, to the county and to the several towns, districts, villages and cities in his county entitled to proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities."

Rev. Statutes of Ill., 1874, pages 857-8, 865-6-7, 874-5-6.

The State Board of Equalization, for the purpose of ascertaining the fair cash value of the capital stock and franchises of corporations in excess of the value of their tangible property, adopted the following rules:

WHEREAS, the fourth clause of section three of "An act for the assessment of property, and for the levy and collection of taxes," approved March 30, 1872, in force July 1, 1872—provides as follows:

§ 3. * * * *Fourth.* The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization, as to ascertain and determine, respectively, the fair cash value of such capital stock, including the francise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding, and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found, from time to time, to be necessary, by said board; *Provided*, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State; therefore be it

Resolved, That for the purpose of ascertaining the fair

cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this State, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:

First. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses,) shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, (such equalized or assessed valuation being taken, in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the francise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this State.

The bill alleges that the Toledo, Peoria and Warsaw Railway Company made out and returned to the clerks of the counties in which said railroad was located, and to the auditor, lists and schedules of all its property, as required by law. That after said schedules were filed with the respective county clerks, the town and county assessors, without authority of law, and without notice to the railway company, made the additions specified in Schedule No. 1. (Printed record, 41; folio 109.) That the respective county boards of equalization made the additions specified in said Schedule No. 1, and caused said equalized assessments by them made to be returned to the respective county clerks, who certified an abstract thereof

to the auditor; that said returns were by the auditor laid before the State Board of Equalization; that said State Board of Equalization added to and deducted from the assessed valuations of personal property and lands, returned to said auditor without making any re-assessment of said property; that the only reason for making said additions and deductions was to equalize the assessed value of said property with the assessed value of the same class of property in other counties, which valuations so made without regard to the value of such property separately from the class in which the same was placed is charged to be in violation of the State constitution; that the value of said "railroad track," as returned to the county clerks and auditor, was $648,436.41, which was distributed to the several counties in which said railroad track is located, according to the value of the same in each of said counties; that the State Board of Equalization assessed the value of said "railroad track" at $1,629,556, and pretended to distribute the same to the several counties, without regard to the actual value of said property in said several counties, but according to the length of the track in the same; but, in fact, distributed the said sum neither according to the actual value in the several counties, nor according to the length of the main track in the same; that the value per mile of the right of way, iron and steel rails, bridging, &c., is different in different counties, and that by reason of the distribution of the assessed value of said railroad track as made by the said State board, said railway company is liable to be taxed in one county on property owned in another. That the taxes in different counties, towns, &c., are widely different, and cannot be made on an assessment as made by the State board, so as to be uniform as to property within the jurisdiction imposing the same, as required by the State constitution; that the aggregate listed value of the rolling stock as returned to the auditor was $388,039, and the aggregate value of

same as assessed by State Board of Equalization was $1,000,110, distributed among the several counties on the mileage principle; that the bonded debt of said railway company on the 1st of May, 1873, was $7,184,719.37; that said board of equalization assessed said railway company the sum of $2,003,415.00 as and for the value of its capital stock, including its franchise over and above the assessed value of its tangible property, and distributed the same to the several counties on the mileage principle; that said board of equalization, in ascertaining the value of said capital stock and franchise, included the debt of said railway company, in accordance with the rule adopted by said board; that all of said pretended equalizations of tangible property, and assessments by said State Board of Equalization, were made without notice to said railway company; that the General Assembly of the State could not delegate its authority to prescribe a rule uniform in operation for the taxation of franchises to the State Board of Equalization in the manner provided by the statute, nor provide for the election of persons to ascertain the value of the property of one class of persons, and elect or appoint other persons to ascertain the value of the property of other classes of persons; that said act allowed the equalization to be made by vote of a minority of the members of said board, and in these respects is in violation of the State constitution; that said franchise was not assessed apart from the capital stock, but is so intermingled therewith that the same cannot be separated, which makes the entire assessment void; that the capital stock and capital of a corporation are distinct and different; that the capital stock belongs to the stockholders, and cannot be assessed against the corporation, but said act requires not only the capital of corporations to be assessed, but their capital stock to be assessed to the corporation in addition thereto, and that the distribution of the amount required to be assessed for capital stock, as required by said act, is in violation of the consti-

tution requiring county, city, &c., taxes to be uniform within the jurisdiction of the body imposing the same. The bill further alleges that such proceedings have taken place; that the collectors of the various counties are threatening to collect the taxes assessed against said railway company as aforesaid; that the capital stock of said railway company on the 1st day of May, 1873, was worthless; that the complainants are willing to pay so much of said taxes as have been legally assessed against said company, but they are unable to ascertain such amount; that they are trustees for the holders of certain bonds mentioned in a deed of trust or mortgage given by said Toledo, Peoria & Warsaw Railway Co. upon its property; that on the 3d day of February, 1874, in pursuance of the terms of said trust deed, they took possession of said railway and its other property, and on the 14th of February, 1874, filed their bill to foreclose said mortgage, in this court, which suit is still pending. The bill alleges that other liens are also existing against said railway company; that its bonded debt, secured by mortgages, amounts to $6,450,000; that its entire franchises and property are not worth to exceed $1,088,749; that its net earnings have never been sufficient to pay the interest on its debt; that its capital stock is of no real value, and the assessment thereof at $2,013,415 is illegal and void; that the said board of equalization did not equalize the property of said railway company with all other personal property in the State of like character, nor its lands, lots, right of way, and other real estate, with all other lands, lots and real estate of like character in the State; but pretended to equalize said personal property owned by like corporations, and said real estate owned by like corporations; that the rates of taxation are different in each and all of the counties, towns and municipalities through which the said railway runs; and prays that the said railway company

may be enjoined from paying, and the other defendants from collecting, any of said taxes.

The defendants, except the railway company which was defaulted, filed an answer denying that in the lists and schedules filed by the railway company, its property was valued at its fair cash value; or that it was listed and scheduled in the manner required by law, in this, that certain real estate was listed and scheduled as railroad track, which was used for stations or other purposes than railroad track, which real estate was subsequently assessed by the local town and county assessors, as was their duty, as real estate other than railroad track, and said assessors in like manner, assessed the tangible personal property of said railway company, and none other, in their respective localities, which did not form part of the rolling stock of said company. Defendants deny that any portion of the property of said company was doubly assessed; admit the equalization by the county and State boards, but deny that the State board in the assessment of the right of way or railroad track and improvements thereon, took into consideration the increased value of such right of way, arising from the fact that the same had been graded, and bridges and culverts built thereon, as it was believed such increased value could be more fairly and equitably ascertained in the assessment of capital stock. Deny that the State board distributed the assessed value of said railway track among the various counties, &c., in any other manner than as required by law. Defendants admit the rate of taxation for local purposes is different in the different municipal corporations through which the road passes, that the State board of equalization adopted and acted on the rules set forth in the bill in the assessment of the capital stock, including the franchises of said railway company, and that said board did not attempt to make an assessment of the value of the franchises as separate from the assessment under the designation "capital stock," but that the same

was included in said assessment under that designation; admit no other notice was given of the proceedings of said board, than such as the law gives; deny that said State board made an arbitrary addition or deduction to the assessed value of the property in the respective counties without any regard to the actual value, and allege that said board examined the abstracts of property assessed for taxation by the various local assessors of the State, as returned to the auditor, and ascertained as nearly as was practicable, the necessary rates of addition and deduction to be made to the assessed value of the several classes of property as equalized by the various county boards, to make a just equalization of the assessed value of property between the respective counties throughout the State; deny that said State board distributed to any county any greater portion of the aggregate value of the railroad track of said company than the value of the portion of such track actually situated in such county, and deny that the action of said State board resulted in the assessment of property of said company for taxation in one county, which was in fact situate in another county. Admit that such proceedings have taken place, that the taxes as alleged in said bill have been extended upon said equalized assessments, and that the collectors in the various counties threaten to collect the same, except as to $\frac{7}{36}$ of the State tax levied and extended upon said assessment, under the act of April 16, 1869, entitled "an act to fund and provide "for the paying of the railroad debt of counties, town-"ships, cities and towns," which $\frac{7}{36}$ of the State tax was after the same was levied and extended in a case involving the validity of the act of April 16, 1869, held by the Supreme Court of the State to be unconstitutional and void, since when the defendants have disclaimed all right to collect said $\frac{7}{36}$ per cent. of said State tax, and have made no effort to collect the same, and in cases where said $\frac{7}{36}$ of said tax had been collected, the same has been re-

funded in pursuance of an act of the General Assembly in force March 26, 1875. A replication was filed, and the case was heard on bill, answers, replication an agreed state of facts, and exhibits therein referred to, and the report of the examiner, and a decree entered pepetually enjoining the collection of the taxes, or any of them in the bill mentioned. The defendants who are the collectors, in the various counties through which the road runs, bring the case to this court, and assign the following errors :

"*First.* The court below erred in perpetually enjoining the collection of the said state, county and other municipal taxes in said decree mentioned."

"*Second.* The court below erred in not dissolving the temporary injunction and dismissing the complainant's bill of complaint."

The proof shows that upon the lists and schedules returned by the railway company, its tangible property was valued at only two-fifths of its cash value. (Printed record, 33; folio 88.) By a stipulation, the various schedules, the proceedings of the State board of equalization, the certificates of the auditor and of the various county clerks, and certain maps, were admitted in evidence. (Record 34; folios 90 to 95.)

From schedule No. 1, record 41, folios 109 to 135, it appears that the only additions made by town or county assessors to the listed value of its property, as returned by said railway company, was the assessment by certain town assessors of certain real estate as not included in the railroad track, but which the company had returned as part of its track. The record contains no evidence to show that the town assessors committed any error in assessing said real estate as other than railroad track, or that any of said railway property was doubly assessed.

POINTS.

I.

The objection, that the local assessors assessed part of the "railroad track" as real estate, other than railroad track, is not sustained by the evidence. The presumption is that the assessors did their duty.

II.

Appellees insist that the act creating the State Board of Equalization is unconstitutional; and this is the great point in the case, as it is not pretended that the action of the board was not according to the statute. It is said that the constitution requires the property of every person and corporation, for the purpose of taxation, to be valued separately, and that the act requires the Board of Equalization to consider all property listed and assessed in different counties, by a classification of the same into the classes of personal property, railroad property, lands, &c., and, upon such consideration, to determine what addition to, or deduction from, the aggregate assessed value of each of said classes, should be made in any county, or throughout the State, and requires the said board to make such addition or deduction by a rate per cent. on the assessed value of each class. The answer to this objection is, that the property of every person and corporation is by the law valued separately in the first instance, and the only effect of the action of the State Board of Equalization is to so adjust the assessment that each person or corporation shall pay a tax in proportion to the value of his or its property.

The fundamental principle underlying the constitutional provision in regard to taxation is that of uniformity, and to assess the same quality of land lying on different sides of county or township lines at different values, for the purposes of taxation, would be to defeat that uniformity and equality in taxation which it was the peculiar object of the framers of the constitution to enforce. Hence, the creation of the State Board of Equalization, composed of persons elected as provided by the constitution, with authority to equalize assessments, so that each person will pay a tax according to the value of his property, which would not be the case if the same class of property belonging to one person was valued higher than when it belonged to another. The fact that the State Board, in equalizing the value of the same class of property belonging to different individuals, does so by a rate per cent. on the aggregate value of the class, leaves the valuation of each person's property of that class separate, as it was before the rate per cent. was added or deducted, and is the same in effect as if the assessment of each person had been added to, or diminished by, the action of the board, in his individual case.

In the case of *Adsit* v. *Lieb*, 76 Ill., 198, it is expressly decided that "the legislature is not prohibited by the con-" stitution from creating a State Board of Equalization, and " investing it with power to equalize the assessments of the " different counties for the purpose of producing uniformity " in the valuation."

The fact that the railway company listed its "railroad track" as of the value of $648,436.41 only, while the State Board assessed it at $1,629,556, affords no reason why the company should not pay taxes on the increased value, unless an individual has the absolute right to pay taxes only on such property as he pleases, and the States, for the collection of their revenues, are to be left to the voluntary contributions of the tax-payers.

2. It is next objected to the act, that it provides that the railroad track, rolling stock, capital stock, and franchise, shall be taxed in the several counties, cities, towns, &c., in proportion that the length of the main track in such county, city, town, &c., bears to the whole length of the road in the State, except the value of the side track, and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, shall be taxed in the county, city, town, &c., in which the same are located; that the county, city, town, &c., special taxes, are different, and that such taxes levied on an assessment, so made and distributed, are not uniform within the jurisdiction imposing the same, and are therefore illegal.

This precise question has been decided in Missouri under a similar constitutional provision. The court say:

" But the point is strongly pressed that the law is objectionable because, aside from the real estate, it provides that the aggregate value of all other property of each (railroad) company shall be apportioned to each city, county, or incorporated town in which said road shall be located, according to the ratio which the number of miles of such road completed in such county shall bear to the whole length of such railroad. So far as the actual road-bed is concerned, it is not questioned that this is a sufficiently uniform and just manner of making the taxes. But it is argued with great earnestness that in the phrase ' all other property,' is included the rolling stock of the railroad, and that the company having its chief offices for the transaction of its business in the city of St. Joseph, there, and there alone, this property should be assessed, and made liable for taxes; that though constantly used in other counties, through which the road passes, in the transaction of the business of the road, still its only *situs* is where the chief office is located, and there it must be taxed. The proposition is undoubtedly true, that where a corporation has its residence, there the property of this description is liable to assessment and taxation, if the law has prescribed no different rule or regulation on the subject. This notion of the *situs* of personal property following the personal residence of the corporation, is a legal fiction, but is not an unbending and uncontrollable princi-

ple of law. It may be modified by the legislature. The rolling stock of a corporation is in a constant state of transition, and has no more real local existence in one county than another. A county through whose whole length it runs, might well think that it had as much right to tax it, as a city that it passed through but for a mile or two at most; but both would have no right to levy a tax, for that would be double taxation upon the same property. This machinery by which the road is operated is constantly passing from one terminus to the other of the entire road, and to save cavil and dispute in respect to it, it was perfectly competent for the legislature to say that it should become a part of the road itself, and become property the same as the road, and that, for the purpose of taxation it should be equally distributed through the counties, cities, or towns through which it passes, in proportion to its length in those respective counties."

State v. *Severance*, 55 Mo., 388.

The Supreme Court of Kansas say:

" A railroad is an entire thing, and cannot well be valued or assessed except as a whole. Hence the provision of the act that provides for taking the entire value of the road and dividing it up by a certain rule for each county, township, &c. through which the road runs, is at least a reasonable rule, and except in rare cases, is probably as good a rule for determining the true value of each particular portion of the road as any other rule that could be adopted."

Missouri River &c. R. R. Co. v. *Morris*, 1 American Railway Reports, 365; 7 Kansas, 210.

It was decided by this Court, in the case of *Tappan* v. *Merchants Nat. Bank*, 19 Wallace, 501, that the provision of the constitution of Illinois, requiring taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same, did not prevent the taxation of the owners of the shares of the capital stock of a national bank in that State, at the place within the State where the bank was located, without regard to their places of residence; that the legislature could compel them to submit to taxation for this part of their property at a

place other than their residences, and that it was competent for the legislature to fix the *situs* of personal property for the purpose of taxation.

The ninth section of the ninth article of the constitution introduces no new rule as to the assessment of property; that was provided for by section one in the same article, and the General Assembly, in strict obedience thereto, has provided for the election of persons to make the assessment of the railroad track, rolling stock and capital stock. All the ninth section does, is to provide that the tax shall be *uniform* in respect to persons and property. The bill fails to show wherein the tax in each county, city, &c., is not uniform within the jurisdiction of the body imposing the same. The fact that special taxes are different in different localities, and that the same species of property, and of the same value, is taxed more in one county, city, &c., than another, furnishes no constitutional objection to the tax in any of the localities. If it was unequal within the jurisdiction of the municipality imposing the tax, it would be objectionable, but this is not pretended.

The constitution of Kansas, like that of Illinois, requires uniformity in the rate of taxation. In commenting on this clause the Supreme Court of that state say :

" The constitution does not require that the manner and mode of assessing and taxing property, or the manner and mode of collecting taxes shall be equal and uniform, but it simply requires that all property shall be assessed and taxed at a uniform rate.

" This the legislature have provided for. All taxable property, real and personal, within this State must under the statutes, be assessed at its true value in money, and the taxes levied upon said assessment must be at an equal and uniform rate; the State taxes, under the statutes, are equal and uniform throughout the State, being levied on a uniform valuation, and fixed at a uniform rate on each dollar of the valuation throughout the State; each county tax is equal and uniform in the same manner throughout the county; and the same may be said of the taxes of each

township district, city and village, and this is all that is required by the constitution."

Missouri River R. R. Co. v. *Morris*, 7 Kansas, 210.

Hines v. *Leavenworth*, 3 Kan., 201.

The objection that the railroad track, rolling stock and capital stock tax are apportioned to the several counties, cities, &c., according to the mileage principle, amounts to nothing more than a complaint that the railroad track, &c., has been assessed too much in some localities, and not enough in others. The right to assess the railroad track something, in each locality, is not denied. And when property is subject to taxation, and has been assessed for that purpose by the proper officers, as in this case, the fact that it is assessed too much, or too little, in any particular locality, affords no ground for a court of equity to enjoin the collection of the tax. If it did, no State, and no government, could collect its revenue. However grossly assessors may err in their estimate, their valuation is conclusive and can only be attacked for fraud.

Albany, &c., R. R. v. *Town of Canaan*, 16 Barb., 244.

To allow every tax payer to contest the payment of taxes by bill in chancery, on the ground that his property was assessed too high, would be destructive of any revenue system. To be effective, taxes must be collected by summary proceeding.

In speaking of the power of a court to restrain the collection of taxes, the Supreme Court of Pennsylvania say:

"It will not do to permit the collection of taxes to be interfered with by such process, unless in the clearest cases of want of jurisdiction in the assessing and collecting officers."

Clinton School District's Appeal, 56 Pa. State, 317.

Where no appeal is given, the courts cannot revise the judgment of the tax officers.

Stewart v. *Maple*, 70 Pa. State Rep., 221.

In the case of *Dows* v. *City of Chicago*, 11 Wallace, 109, this Court say:

" Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment, constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked."

All the objections stated under this head have been especially considered and passed upon by the Supreme Court of the State of Illinois.

In the case of *The C. B. and Q. Railroad Co.* v. *Cole*, reported in the pamphlet copy of tax injunction cases, herewith filed, page 43, the Supreme Court say :

" A court of equity will never entertain a bill to restrain
" the collection of a tax, except in cases where a tax is un-
" authorized by law, or where it is assessed upon property
" not subject to taxation, or where the property has been
" fraudulently assessed at too high a rate."

See also *Munson* v. *Wilder*, 66 Ill., 383.

In the case of *Du Page Co.* v. *Jenks*, 65 Ill., 275, the Supreme Court say :

" It is with reluctance that chancery stays the collection
" of the public revenue. It is a branch of equity jurispru-
" dence of very modern introduction, and of doubtful ex-
" pediency. Courts will not interfere by injunction to pre-
" vent the collection of taxes because there have been ir-
" regularities in the assessment."

In the case of *The Republic Life Insurance Co.* v. *Pollock*, Tax Injunction Cases, 36 and 37, the Court say :

" It is urged that the Board of Equalization has overvalued the property assessed, and adopted a false rule for ascertaining such value. Even if it were true that there was too great a value placed on this property, counsel mistake the power of the court to afford relief for that reason. Our constitution, Article 9, section 1, provides that the General Assembly shall provide such revenue as may be needed, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise. Thus it will be seen that all power to fix a valuation is taken from each of the departments of the government. It is unmistakably invested in the persons elected under the requirements of the statute, and it can only be fixed by them, and not otherwise. The legislative branch of government could not exercise this power, nor could the executive, because the constitution has not only vested it in the persons elected, as directed by the General Assembly, but all other persons, bodies, departments, or such bodies combined, are expressly prohibited from performing that duty.

" Nor is there any power expressed or implied by which the courts can fix a valuation, or review the action of the assessors. They are invested with the sole power, and we are aware of no authority to review their action. The law has not, nor can it, in view of this constitutional provision, empower the courts to fix the valuation of property for taxation. We regard no proposition clearer. And if the courts may hear evidence, and change the valuation fixed by the officers elected under the law to perform that duty, then it is the courts, who are not elected or appointed for the purpose, who fix the value, and that would be to make the valuation otherwise than is *peremptorily* required by the constitution. For the courts to hear evidence and change the valuation fixed by the assessors, would be in direct and palpable violation of the constitution. When those officers have acted it is final, and the taxpayer must submit to the action of the officer who is clothed with the sole power to make the estimate of the value, unless he can show it was fraudulently made, or that the property has been assessed not liable to taxation, or the legislature

has disregarded or transcended the principles of equality, or where a tax has been levied when not authorized by law. * * * *

"If every taxpayer might appeal to the courts, either before or after the warrant comes to the hands of the collector, the greater portion of the revenue could be tied up and delayed for years, and the very existence of the government endangered, as its life depends upon the requisite amount of revenue for its support."

3. It is insisted that the mode provided by the act and adopted by the State Board of Equalization for the assessment of the capital stock of the railway company is unconstitutional, and that the General Assembly could not provide for the election or appointment of persons to ascertain the value of the property of one class of persons, and elect or appoint other persons to ascertain the value of the property of other classes of persons. But this is precisely what the constitution says may be done. The 1st section of Art. 9, after providing that the value of every person's property shall be ascertained by persons elected or appointed, as the General Assembly shall direct, contains this exception :

"But the General Assembly shall have power to tax "peddlers, auctioneers, * * * and persons or corpor- "ations owning or using franchises and privileges, in such "manner as it shall from time to time direct, by general "law, uniform as to the class upon which it operates."

Under this exception, it was competent for the General Assembly to provide as it did by the 4th clause of the 3d section of the revenue act for the assessment of the capital stock of corporations, by different persons than those who assessed other property. In very terms the constitution gives the General Assembly power to tax peddlers, &c., and corporations owning or using franchises, in such manner as it shall from time to time direct, which would have no meaning if the General Assembly could only ascertain the value of the property of this class of persons by

the same persons and in the same manner as required in regard to other property. There is nothing in the constitution which inhibits the General Assembly from appointing different persons to ascertain the value of the property of different classes of persons; so far from it, the constitution enumerates certain classes of persons, and property which may be taxed in a different manner from other persons and classes, the tax as to each class of persons and property to be uniform.

The constitution does not require the General Assembly to prescribe a rule for the assessment of the franchises of corporations, but that the law for their taxation should be uniform—such is the law which has been enacted for that purpose. It requires the franchises of all corporations to be valued by the State Board of Equalization, in such manner as to ascertain their fair cash value, over and above the assessed value of the tangible property of the corporation. This is a general law, uniform in its operation. The clause of the act which declares that "the board shall "adopt such rules and principles for ascertaining the fair "cash value of such capital stock as to it may seem equi-"table and just," confers no power which the board would not have had without the clause. It is no delegation of power, because the power would have existed without it.

When authority is given to a person or body of persons to do an act, it carries with it the power to adopt the necessary means to accomplish the act. When the constitution gives to the General Assembly power to tax peddlers, auctioneers, grocery keepers, corporations, &c., it does not mean that the General Assembly must itself levy and collect the taxes, any more than does the provision in the constitution of the United States giving to Congress power to coin money, require the members themselves to do the coining.

The objections raised in this case to the validity of the

act of the General Assembly, and which are being considered under this head, have all been passed upon by the Supreme Court of the State, Tax Injunction Cases 23. This is its language :

" The board is directed to ascertain the fair cash value of the capital stock, including the franchise, over and above the assessed value of the tangible property. No discretion is left to the board as to what shall be assessed or what degree of value shall be ascertained. It is merely empowered to adopt such rules and principles for ascertaining that value as it shall deem equitable and just. The objection (that legislative power is delegated to the board) implies that valuations, to be constitutional, must be made without regard to any rules or principles.

" It would be very difficult to prove, it is believed, that the great principle of uniformity in valuation, so earnestly and so properly insisted upon by counsel, can be preserved, without some rules or principles in valuation, even by local assessors. If each distinct valuation is made with reference to other valuations of the same or different kinds of property, it is made upon a rule or principle. If its value is fixed by its market value, or by what is supposed to be its actual value—if deductions are made, on account of imperfections or inferiority, from what the articles would otherwise be deemed worth, there is a rule or principle by which the judgment is guided in determining the valuation. But the Board of Equalization is composed of the Auditor of State and one member elected from each of the congressional districts, and that they shall act at all, it is necessary that at least a majority shall agree. It must be apparent to every one that some rule or principle necessarily has to be adopted by which the aggregate judgment shall be ascertained.

" We are unable to perceive that any power is, in this respect, conferred upon the board which it would not have equally possessed had the statute been silent upon the subject, or that the power given is more than is, by fair implication, conferred upon local assessors, and exercised by them in all cases where they make rational and just assessments of the property within their respective districts."

At page 17 the Court say :

" It surely cannot be doubted that the law requiring that the Board of Equalization shall ascertain and determine the fair cash value of the capital stock, including the fran-

chise, of all companies and associations now or hereafter created under the laws of this State, over and above the assessed value of the tangible property of such company or association, is a general law, or that it is uniform as to the class upon which it operates. It is not restricted to any particular part of the State, nor is it limited to a special tax—it extends to the entire State, for the purposes of general taxation, and it applies the same rule to all within the class upon which it operates—namely: the corporations now or hereafter created under the laws of this State. It is not required, as seems to be thought by some of the counsel, with whose arguments we have been favored, that the Legislature shall, in providing for the taxation of corporations, under the last clause of the section referred to, designate the precise amount which the corporation shall pay, and that this shall be the same on each corporation, without regard to the value of the franchise or privileges enjoyed, nor that such taxation shall be of like character with that which may be imposed on inn keepers and others pursuing the particular vocations named; it is only required that *they shall be taxed in such manner as the General Assembly shall, from time to time, direct by general law;* and the only *uniformity required is as to the class* upon which such general law shall operate. It is therefore left entirely to the Legislature to determine whether corporations shall be taxed only on their tangible property, on the amount of their gross receipts, or, as in the present instance, on the value of their tangible property, and on the fair cash value of their capital stock, including their franchises, over and above the assessed value of their tangible property, subject merely to the limitation that it shall be directed by general law, uniform as to the class upon which it operates." * * * * * *

It is again insisted that if the capital stock, including the franchise, can be assessed against the corporation, as its property, it must be upon the basis of a valuation to be made by the same officer to whom the law confides the duty of assessing other persons and other kinds of property.

After referring to the legislation of the State and the decisions of its courts on a similar provision in the former constitution of the State, the court say:

" It is thus seen that neither the previous enactments of " the legislature, nor decisions of this court, can be ap- " pealed to in support of the objection urged. It is un- " reasonable to suppose that if the convention which " framed the present constitution had designed that all as- " sessments should thereafter be made by the same class " of assessors, they would have adopted the precise phrase- " ology of the constitution of 1848 relating to that subject, " under which it was known that a different practice had " obtained. Whether property is assessed by local assess- " ors or by the State Board of Equalization, it is, in the " language of the constitution, assessed 'by some person " 'or persons' elected or appointed in the manner the " General Assembly has directed, 'and not otherwise.' No " attempt is made by this clause of the constitution to limit " the number of those who shall be elected or appointed for " this purpose, or to prohibit their classification in accord- " ance with the duties imposed, or in any manner to pre- " scribe how the value of property shall be ascertained by " them." * * * *

" We can not believe that a Board of Equalization, having the assessed values of all other taxable property in the State before them for the purpose of equalization, has less facility for fixing a fair, proportionate value upon corporate property than the local assessors have.

" There is, moreover, an almost insuperable difficulty which must attend all attempts by local assessors to assess the capital stock, franchise, roadway and rolling stock of most railroad companies. Such roads are usually located through several counties. The cost of construction in a particular town or county affords no criterion of the value of that portion of the road, for every mile of the road is equally indispensable to its existence as a whole, and contributes, proportionately, to its principal earnings. Local improvements may, indeed, vary, and they are required to be assessed by the local assessors; but the road and its equipment constitute a single, entire property. In determining the value of such property, the question is neither one of original cost, nor of the intrinsic value of the various items of which the road and its equipment is com-

posed, taken separately; but what is it worth with all its capabilities and facilities as a railroad? The franchise extends to the entire corporate property, and it is not possible that it can be divided. It must, if assessed at all, be assessed as an entirety, and this, as we have already shown, may be in connection with the property to which it is attached." (Tax injunction cases 21, 23.)

The Court of Appeals, of New York, say:

"Each piece of property is to be estimated in connection with its position and the business and profit to be derived therefrom. The road in question is part of a whole, and is to be valued as such."

People, &c., v. *Barker*, 48 N. Y., 70.

5. The objection that the board of equalization acted without notice has also been disposed of by the Supreme Court, Tax Injunction Cases, page 34, in these words:

"The constitution does not provide that the Legislature shall require that persons or corporations, whose property shall be assessed, for taxation, shall be notified of the assessments or the rules adopted whereby to determine the value of the property, or that there shall be allowed the right of appeal in such cases.

"These matters address themselves purely to the discretion of the Legislature. The law, as it is made, is in this respect conclusive."

See also *Adsit* v. *Leib*, 76 Ills., 201.

The Supreme Court of Kansas say:

"Notice to the owner of property is never, so far as we are aware, made a prerequisite to a valid assessment."

M. R. &c., R. R. Co. v. *Morris*, 7 Kansas, 210.

6. The objection to the assessment of the capital stock and franchise of the railway company by the State Board of Equalization, and to the manner in which it was done, is so fully met and clearly demonstrated to be fallacious by the decisions of the Supreme Court of the State upon these precise questions, that little more is necessary than to quote its language. In the case of *Porter* v. *The*

Rockford, &c., R. R. Co., 76 Ills., 561, (Tax injunction cases 25, 26, 27, 30, 31), the court, after quoting the rule adopted by the State Board of Equalization, say:

"It is argued that by adopting this mode of valuation the board assessed the corporation upon the value of the debts which it owes, and which are not in any sense its property.

"We are not to assume that this was done, as it is not enjoined by the revenue act, and would be in clear violation of the duty imposed on the board. It appears from the resolutions that the object was to assess the capital stock and franchises of corporations, as is directed by the fourth clause of the 3d section of the revenue act, and the assessment is, in fact, on the capital stock including the franchise. The averment in the bill in this respect is contradicted by the exhibits.

"There is a seeming injustice in taxing corporations which are largely indebted and whose earnings are insufficient to pay the accruing interest, as is alleged to be the fact in the present case, to the full extent of the value of all their property and privileges, without regard to their indebtedness, yet it has never been the policy of the Legislature to make any discrimination in favor of individuals on this account; and corporations can not claim an exemption from taxation, when, under like circumstances, an individual would not also be exempt to the same extent."

"The mode of valuation adopted by the Board of Equalization assumes: 1st. That the value of the aggregate shares of capital stock is equal to the value of all the property, including the franchise belonging to the corporation, when it is not indebted. 2d. That when the corporation is indebted, the indebtedness proportionately reduces the value of the shares of capital stock. 3d. That the value of the debt is determined by the value of that belonging to the corporation from which its payment can be enforced, so that, however great the nominal amount of the debt, its actual value can never exceed that sum. To illustrate: Where a corporation is free from debt and the aggregate value of its shares of stock is, say, $150,000, it is assumed that the value of its capital stock, including its franchise, is $150,000. If the same corporation, still retaining the same property, is, however, indebted $50,000, this will reduce the aggregate value of its shares of stock to $100,000, but, as the law does not exempt corporations or individuals

from the payment of taxes on account of indebtedness, it would not be accurate to tax the corporation at this amount, because to do so would be to exempt it to the extent of its indebtedness. To ascertain, therefore, what would be the aggregate value of its shares of stock, if the corporation were free from debt, it is necessary to add the value of the debt to the value of the shares of stock. If the corporation is, in the given case, indebted $150,000, the shares of stock will be worth nothing, but the value of the debt will be $150,000, which is the value of that from which its payment can be enforced; and so, if the corporation is indebted in any greater sum, the value of the debt will still be only $150,000.

"If these assumptions were entirely accurate, there could be no question as to the accuracy of the valuations determined by the board. But it is insisted that the market values of shares of stock are sometimes based upon artificial and fictitious valuations, produced by stock gambling and dishonest speculations. This may be conceded to be true, and still it will not follow that they, therefore, can not be valued for taxation, or their market value may not be taken as a sufficiently accurate approximate value for that purpose. It has always been supposed that a fair test of the value of an article is what it will sell for, and we are unable to perceive how a more accurate test of value can be ascertained. The fact that the market value is fluctuating makes such a test less accurate than it would otherwise be, still it must, of necessity, be deemed a sufficient approximation of actual value for all practicable purposes. So far as we are advised, it has never been questioned but that shares of stock may be assessed and taxed on the basis of their market values. It is difficult to conceive why, if this may be done, as against the shareholders, the aggregate market values of the shares of stock may not be assumed as an equally fair expression of all the taxable values, tangible and intangible, belonging to the corporation, since it is not claimed that the shares have any value independent of the interest they represent in the franchise and other property of the corporation. Live stock, grain, etc., may be assessed for taxation on a valuation based on their market values, yet it is as well known that such values are frequently affected by gambling speculations, as it is that shares of stock are thus affected. It is obvious that if no property can be assessed for taxation except where it has a permanent market value, based upon an infallible standard of actual intrinsic value, the sooner

the present system for raising revenue is abandoned, the better it will be for the State, for it is scarcely possible that any considerable part of the property in the State can be so valued.

"It is also objected that other elements enter into the present value of debts, payable in the future, than the value of the property from which their payment can be made. There is evidently much more of truth in this when applied to individuals, than to private corporations. The habits, prospect of longevity, business qualifications, etc., of the individual, would, doubtless, to some extent, affect the value of his debt. But, in case of a corporation, the corporate powers, capacity, and the length of time which its business may be prosecuted, etc., are defined by its charter — they are its franchise, and, as has been seen, its property.

"We are unable to say that the conclusion that the present value of the debts of a private corporation is determined by the value of its property, tangible and intangible, and that such value may, therefore, be taken as the representative of an equal amount of property, tangible and intangible, is so unreasonable and extravagant as not to amount to a reasonably fair approximation. * * * *

"It is further argued that by this mode of assessing the capital stock, including the franchise, a different rule is adopted from that applied to other property.

"The direction to the Board of Equalization is the same as that given to the local assessors. It is to assess all property, which it is required to assess, at its fair cash value. By the published proceedings of the Board of Equalization, which are brought before us by the bill, it appears that this was done; and when the property was so assessed, its value was equalized upon a basis of valuation applied to all the property in the State. In these respects it does not appear that any difference was made between capital stock, including the franchise, and other property. In determining the value of a particular kind of property, the assessor must necessarily seek information, and exercise his judgment with reference to the peculiar character of the property. It hence must follow that the process by which the judgment of value is formed, must vary in proportion to the dissimilarity of the property assessed. The value of a dollar in coin, for instance, is determined by ascertaining that it is what it purports to be. But no one would pretend that the value of all other property can be thus determined. We cannot conceive that it ever

was contemplated by the adoption of the clause in the constitution requiring every person or corporation to pay a tax 'in proportion to his, her or its property,' that however dissimilar the property may be in its nature, its value must be determined by precisely the same process; and we must suppose that when the Legislature enjoined the duty of this assessment, it was intended that the value of the property to be assessed should be 'ascertained and determined' by the Board of Equalization in that mode which to the judgment of its members seemed best adapted to that purpose.

"The local assessor, in making valuations, declares results only. The process whereby his judgment is convinced is unknown to the public; but the Board of Equalization, in assessing the value of this particular class of property, has gone further, and declared not merely the results of its judgment, but the process also by which those results were produced.

"If the objection urged can be sustained, it is not perceived why every assessment of tangible property may not be assailed upon like principles, where the information possessed and the reasoning thereon by the local assessor shall not be the same in regard to each distinct item of property he assesses for taxation.

"The duty enjoined upon the board was attended with many and serious difficulties. The valuation as made, is obviously not perfect. But in the many able and ingenious arguments which have been filed in the several cases where the question is discussed, we fail to find any mode of valuation pointed out which is less liable to objection. The most strenuous objection urged is on account of taking the debts of the corporation into consideration; yet it seems to us as impossible, in determining the value of the capital stock, including the franchise, upon the basis of the value of the aggregate shares of stock, to make a fair approximation to accuracy, without taking the indebtedness of the corporation into consideration, as it would be to ascertain the price to be paid for property which is purchased subject to mortgage, without taking the amount of the mortgage into consideration.

"But it does not devolve upon us to justify the accuracy of the assessment as made. In the view we have taken of the case, the Board of Equalization assessed the value of the capital stock, including the franchise, over and above the assessed value of the tangible property, and did not assess the shares of stock belonging to the shareholder-

ers, or debts of the corporation. The property assessed was the property of the corporation upon which it was liable to be assessed for the payment of taxes. The constitution, as has been seen, requires that the value of property assessed for taxation shall be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, but not otherwise. The General Assembly has directed that the Board of Equalization, and not the courts, shall exercise this function. However much, therefore, we may think the board erred in its valuation, no power is given us to arrest the collection of the tax merely on that account. The board was fully empowered by law to make this particular assessment, and had jurisdiction over the property and the corporation for that purpose.

"The law is well settled that assessors, in judgingof the value of property, act judiciously, and although they may err and assess it too high, this, of itself, will give a court of equity no jurisdiction to interfere and restrain the collection of the tax."

The decision in the case of *Porter* v. *Rockford, &c. Railroad Co.* was rendered at the January term, 1874, of the Supreme Court of Illinois. At the June term, 1875, in the case of *The Republic Life Insurance Co.* v. *Pollock*, Tax Injunction cases, 35, the court reaffirms the decision made the year previous in the case of *Rockford, &c.* v. *Porter*, in this language :

"We are asked in this case to review the case of *Porter* v. *Rockford, Rock Island and St. Louis R. R. Co.*; but after a careful reconsideration of the rules there announced in the light of appellant's argument in this case, we perceive no reason to overrule, or even modify anything that was said in that and other cases decided at the same time, involving questions relating to the taxation of the property, and franchises of corporations."

See also *The C., B. & Q. Railroad Co.* v *Cole*, Tax Injunction Cases, 43, to same effect.

It is thus settled by a series of decisions of the highest judicial tribunal of the State, interpreting its own constitution and laws, that the revenue act under which the assessment in this case was made, is constitutional, and

that the manner of making the assessment by the board of supervisors, is valid. These are questions peculiarly within the province of the State tribunals to settle, and with which the Federal judiciary has nothing to do, except some provision of the constitution of the United States is violated, for which there is no pretence in this case.

Chief Justice TANEY, speaking for the court in *Nesmith* v. *Sheldon*, 7 Howard, 818, said: "It is the established "doctrine of this court, that it will adopt and follow the "decisions of the State courts, in the construction of their "own constitution and statutes, when that construction has "been settled by the decision of its highest judicial tri- "bunal. After the decision above mentioned, (of the Su- "preme Court of Michigan,) therefore, the question "certified, cannot be considered as open for argument in "this court."

In *Carpenter* v. *Pa.*, 17 Howard, 462, this court said: "This court has no authority to revise the act of Pennsyl- "vania, upon any grounds of justice, policy, or consistency "to its own constitution. These are concluded by the "decision of the public authorities of the State. The only "enquiry for this court is, does the act violate the constitu- "tion of the United States, or the treaties and laws made "under it?"

In *Leffingwell* v. *Warren*, 2 Black, 603, this court said: "The construction given a statute of a State by the "highest judicial tribunal of such State, is regarded as a "part of the statute, and is as binding upon the courts of "the United States as the text."

In *Witherspoon* v. *Duncan*, 4 Wallace, 217, this Court say: "If, therefore, the lands in dispute could be taxed, "the decision of the Supreme Court of the State is con- "clusive that the assessment, sale and cofirmation were

" regular, and divested the title derived through the hear-
" ing of Harrell. The taxability of the lands is then the
" only question which we are authorized to consider and
" determine."

Again, in the *Delaware Railroad Tax Case*, 18 Wallace, 231, the court say: " The State may impose taxes
" upon the corporation as an entity existing under its laws,
" as well as upon the capital stock of the corporation, or
" its separate corporate property. And the manner in
" which its value shall be assessed, and the rate of taxa-
" tion, however arbitrary or capricious, are mere matters
" of legislative discretion. It is not for us to suggest in
" any case that a more equitable mode of assessment or
" rate of taxation might be adopted than the one prescribed
" by the legislature of the State; our only concern is with
" the validity of the tax, (as affected by the United States
" constitution); all else lies beyond the domain of our ju-
" risdiction."

The cases of *Hamilton Co.* v. *Massachusetts*, 6 Wallace, 633, and of *Lane Co.* v. *Oregon*, 7 Wallace, 71, are to the same effect.

In the case of *Bailey* v. *Pacific R. R. Co.*, decided at the October term, 1874, and not yet published in the reports, this court said: " It is the peculiar province of the
" highest court of a State to decide whether the method of
" assessing and collecting taxes, is in conformity with the
" law of the State, and its decision is controlling."

It would be a work of supererogation to multiply authorities on this point, or to reiterate the reasons for the rule which has been established. They are familiar and obvious to every member of the court, and the profession.

It would seem that the repeated decisions of the Supreme Court of Illinois upon all questions arising in this case, growing as they do out of the construction of her own

constitution and laws, ought to be conclusive. It cannot be that the Federal courts will undertake to supervise the revenue laws of the various States, on the ground that they are unwise, unjust, or unequal, or upon any other grounds whatever, so long as they do not contravene some provision of the constitution of the United States.

But if this court, contrary to a long and uniform series of decisions of its own, is to examine into the justice and policy of the revenue laws of Illinois, and the manner of their execution by the State authorities, then it is insisted that the laws are eminently just, and in their application to this case have been executed with as great fidelity as is practicable through human instrumentalities.

That every person should pay a tax in proportion to the value of his property is a proposition no one will dispute. That some means must be devised to ascertain this value, is also indisputable; that no means can be devised which will be perfect and produce exact equality in this respect, may be admitted. That sworn officers, selected by the people themselves, for the express purpose of valuing each person's property, will come as near fixing its true cash value as any other system, is believed; that a franchise is property, often a very valuable privilege, which will command a large sum in the market, is known to every one, and therefore it is necessarily subject to taxation; this court has said, "It is not questioned that the States may tax the "franchises of companies created by them." (State Tax on Railway Gross Receipts, 15 Wallace, 296.) That the capital or capital stock of a corporation and shares of stock are distinct and independent interests or property, has been often decided by this court.

People v. *Commissioners*, 4 Wallace, 258.
Gordon v. *Appeal Tax Court*, 3 Howard, 150.

The mode of assessing franchises and capital stock is not peculiar to Illinois, but has been substantially adopted in other States.

Commonwealth v. *New England, &c. Co.*, 13 Allen, 391.

Osborn v. *N. Y. & N. H. R. R. Co.*, 40 Conn., 491.

The bill is defective in not stating and offering to pay amount of tax admitted to be due. "No court can give "relief to a party who does not show what he is entitled "to demand."

Conway v. *Township Board*, 15 Mich., 263.

LYMAN TRUMBULL,

Of Counsel for Peoria County.

IN THE

Supreme Court of the United States,

NO. 702,

OCTOBER TERM, A.D. 1875.

ISAAC TAYLOR, *Collector of Peoria County*, et al.,
APPELLANTS.

vs.

JAMES F. SECOR and WILLIAM TRACY,
APPELLEES.

BRIEF FOR APPELLEES.

— BY —

E. C. AND R. G. INGERSOLL.

IN THE

Supreme Court of United States,

NO. 702,

OCTOBER TERM, A.D. 1875.

ISAAC TAYLOR, *Collector of Peoria County*, et al.,
APPELLANTS.

vs.

JAMES F. SECOR and WILLIAM TRACY,
APPELLEES.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The appellees, trustees for the holders of bonds secured by a mortgage on the Toledo, Peoria and Warsaw Railway, having taken possession of the property by virtue of the deed of trust, and having made application to the officers of the Railway Company, and the officers having refused to act, filed a bill against the collectors of taxes in the various counties of the State of Illinois through which the road runs, as well as against the Railway Company, to restrain the collectors from collecting, and the Company from paying, the taxes against the property of the Railway Company for the year 1873.

The bill filed by the appellees shows, among other things—

1. That the Railway Company made the returns, duly verified by its officers, mentioned in and required by the revenue law of the State of Illinois, of all its tangible property, and valued the same at $1,088,749.71; and that the valuation of said property was raised by the State Board of Equalization to the sum of $2,629,367.00.

2. That the Railway Company returned the capital stock and franchise of the Railway Company as utterly and entirely worthless; and that the Board of Equalization disregarded such sworn return as to the value of the said capital stock and franchise, and assessed the same for the purposes of taxation at $2,003,415.00, making the total assessment against said Railway Company, $4,632,782.00.

The bill also shows that the bonded debt of the Company is $6,450,000, and that the gross earnings of the Company have never been sufficient to pay the operating expenses and interest on the bonded debt, nor anywhere near that sum; and that the capital stock of the Railway Company is $5,000,000, divided into fifty thousand shares of $100 each, and that said shares are utterly worthless.

3. The bill further charges that according to the revenue laws of the State of Illinois, the company was required to make returns under oath, giving the description and value of all its property; and that the company complied with the law in that regard; and that the Board of Equalization, without hearing any evidence and without giving any notice, raised the valuation from $1,088,749.71, to the enormous total of $4,632,782.

It is claimed that the Board increased said assessment arbitrarily and fraudulently, not only without having any evidence justifying said increase, but in spite of the sworn returns of the Railway Company, and that this was done without any notice to the Railway Company or without any opportunity being given to the Railway Company to contest the propriety of such assessment, or to be heard one way or the other.

4. The bill further shows that the Board of Equalization, in finding the value of the railroad track, divided it between the several counties and municipalities through which it is located, according to the number of miles in each county or municipality, and giving to such county or municipality the same proportion of the entire valuation that such number of miles might bear to the entire length.

Real estate was taken from one county and taxed in another, thus giving a constructive *situs* to land.

Rolling stock belonging to a railroad company is personal property in the State of Illinois, for every purpose and under all circumstances, it being provided in the fundamental law of the State, that it shall be personal property. Yet, notwithstanding this, the Board of Equalization treated the rolling stock as real estate for the purposes of taxation.

In other words, the Board of Equalization treated real estate as personal property, and personal property as real estate, to the end that corporate property might pay a greater amount of tax in proportion to its value than like property owned by individuals.

5. The bill further shows that individual owners of

real estate have the right to show that the real estate of others has been assessed too low or theirs too high; and that such individual owners also have the right of appeal; that under the said revenue laws corporations are denied the right of appeal, and denied the privilege of showing that the real estate of others has been assessed too low or their own too high; and this is charged in the bill to be a violation of the principle of uniformity.

6. That the said principle of uniformity has been violated in not giving to railroad property the same benefit of equalization which is given to like property owned by individuals; that the real estate belonging to the said Railway Company was not equalized with other real estate of like character in the State of Illinois; and that the personal property belonging to the said Railway Company was not equalized with all the other personal property of like character in the State of Illinois, but that the said property belonging to said Railway Company, for the purposes of taxation, was classified and equalized only with like property owned by like corporations; that all property belonging to said Railway Company was classified for the purposes of taxation, not according to the property, but according to the owners of such property.

7. That the property of said Company was assessed upon a different basis from like property owned by individuals, and that this was done for the purpose of placing the burden of taxation upon certain property, not in proportion to the value of the property, but because the same was owned by a railway company.

8. The bill further shows that the State Board of Equalization adopted certain rules and principles for the purpose of ascertaining the value of the tangible property of railway companies; but that to follow said rules or principles would necessarily do injustice.

9. It is also shown in the bill that the rates of taxation are different in every town, county, and municipality through which the said road runs.

In addition to the sections of the Constitution quoted by counsel for appellants, we refer the court to Sections 6 and 10, of Art. IX of the Constitution of Illinois, and Sec. 10 of Art. XI:

"§ 6. The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever."

"§ 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

Art. XI, § 10. The rolling stock and all other movable property belonging to any railroad company

or corporation in this state, shall be considered personal property. * * *

The following sections of the "Act for the assessment of property, and for the levy and collection of taxes," approved 30th March, 1872, are omitted from appellants' statement of the case:

"§26. Whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair, and complete schedule of such property, he may examine such person under oath in regard to the amount of property he is required to schedule, and for that purpose he is authorized to administer oaths, and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such person, or his principal, according to his best judgment and information."

"§ 292. The words and phrases following, whenever used in this act, shall be construed to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this act. 1. *Assessor: Assessors.* Town, District and Deputy Assessors.

"§ 78. The assessor or his deputy, shall * * * call at the office, place of doing business, or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property in accordance with the provisions of this act; and the person listing the property shall enter a true and cor-

rect statement of such property, in the form prescribed by this act, which shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books."

"§ 79. If any person required by this act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, or usual place of residence or business of such person, a written or printed notice requiring such person to make out and leave at the place named therein, the statement or schedule required by this act. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose."

"§ 82. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately, and the name of the owner placed opposite each amount.

"§ 86. In counties under township organization, the assessor, clerk, and supervisor of the town shall meet on the fourth Monday of June, for the purpose of reviewing the assessment of property in such town. And on the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment, and correct the same as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assess-

ed, or his agent, shall be notified of such complaint, if a resident of the county."

"§ 97. The county board, at a meeting to be held for the purpose contemplated in this section, on the second Monday in July annually, after the return of the assessment books, shall:

1. On the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to be just. No complaint that another is assessed too low shall be acted upon until the person so assessed, or his agent, shall be notified of such complaint, if a resident of the county."

"§ 4. If the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises, and consistent with this act."

"§ 114. When said board shall have completed its equalization of assessments, for any year, the chairman and secretary shall certify to the auditor the the rates finally determined by said board to be added to or deducted from the listed or assessed valuation of of each class of property in the several counties, and

also the amounts assessed by said board; and it shall be the duty of said auditor, under his seal of office, to report the action of the board to the several county clerks immediately after the adjournment of said board."

"§ 126. Said clerks shall extend the rates of addition or deduction ordered by the county board and state board of equalization, in the several columns provided for that purpose. The rate per cent. ordered by the state board of equalization shall be extended on the assessed valuation of property, as corrected and equalized by the county board — except, that in the case of railroad property denominated "railroad track" and "rolling stock," said rates shall be extended on the listed valuations of such designated property."

2 Gross' Stat. Illinois, pp. 340, 376, 347–8, 352–3, and 354.

It is shown by the evidence that the rates of taxation are widely different in the different counties and towns.

In the county of Iroquois the rate of tax varies from 81 cents to $2.27 upon each one hundred dollars valuation. Exhibit H, 1.

In the county of Ford the rate varies from $1.73 to $3.01. Exhibit H, 2.

In the county of Livingston the rate varies from 99 cents to $2.42. Exhibit H, 3.

In McLean county from $1.45 to $3.45. Exhibit H, 4.

In Woodford county from 71 cents to $2.58. Exhibit H, 5.

In the county of Tazewell from $1.21 to $1.82. Exhibit H, 6.

In Peoria county from $1.10 to $2.84. Exhibit H, 7. The highest rate being in Limestone township, where the company has no property but runs over a leased line.

In the county of Fulton the rate varies from 81 cents to $2.80. Exhibit H, 8.

In the county of McDonough from $1.06 to $2.27. Exhibit H, 9,

In the county of Hancock from 78 cents to $2.62. Exhibit H, 11.

And in the county of Henderson from 99 cents to $1.16.

The same exhibits also show that the county board raised the valuation of property in Class C without notice one hundred per cent., and property in Class D two hundred per cent., in Livingston county.

In Peoria county the town assessor raised property in Class C about fifteen per cent., and in Class D about sixty-six per cent., all without notice. And the assessor of Hollis township raised the assessment of Class D one thousand per cent. without notice. The assessor of Timber township raised the value of Class C fifty per cent., and of Class D three hundred per cent., all without notice.

In Fulton county, the assessors of Harris, Cass, Putman, Canton and Orion townships included in their assessments of property in Class C the improvements on the right of way, changing the valuation more than one hundred and fifty per cent. without notice, and then increased the listed value in property in Class C from $150 to $15,780, something over one

thousand per cent., and the county board raised it to $16,130. All this without notice.

Exhibit G, 8, shows that the right of way and improvements were assessed in gross by the state board, and that the county received its share according to miles, notwithstanding the fact that the improvements had already been assessed by the county of Fulton—thus taxing the improvements twice.

In McDonough county property in classes C and D were increased by the local assessors about four hundred per cent. without notice. Exhibit H, 9.

In Hancock county property in Class D was increased by local assessors two hundred per cent., and Class D five hundred per cent., without notice.

In Henderson county Class D was increased one hundred per cent. They also assessed as railroad track $9,685 in a town where the company had no track and no property. Exhibit H, 11.

The proceedings of the Board of Equalization, and the certificate of the State Auditor, show no rates of addition or deduction to the listed values of lands and improvements included in railroad track, and the rate per acre at which they were assessed cannot be ascertained. The right of way and improvements were assessed in gross for the whole length of the right of way owned by the railroad company, on the basis of 230 miles and 1531 feet, and distributed pro rata to each county, as shown by page 140 of Exhibit F.

The value of the improvements were distributed pro rata without regard to location.

The same rule distributes the 1267 feet in the city of Peoria, listed at $1025.00, without improvements, pro rata through Henderson county, where the same

length of right of way is listed at $14.60, and through Iroquois county at the same rate.

By the same rule the value of lots in right of way in other counties is distributed to Iroquois, Ford, Livingston and Henderson counties, where none are returned.

The superstructure of the main track is distributed on the basis of 230 miles and 1531 feet, to the several counties in proportion to the length of the main track in the same.

POINTS.

The revenue law of 1872 is based on the first clause of the first section of Article IX of the Constitution of Illinois, which provides for an assessment of property by valuation. The law has nothing to do with the second clause of that section, providing for taxing peddlers, auctioneers, hawkers, brokers, merchants, etc. The Act of 1872 has nothing whatever to do with this second clause, and does not, in any of its provisions, purport to be based upon said clause.

Under the constitution, it is admitted by all that taxation must be equal and uniform, to the end that all property may bear its just proportion of the public burdens. We do not claim that exact justice can be done under any legislation that it is possible for man to devise, for the reason that the instrumentalities will be imperfect; and where the inequality of burden arises from imperfection of the instrumentalities used, the law is not in fault; but where the inequality is caused, not by failing to carry out the law in all its provisions, but from the fact that the law is carried out, then we claim such law is unconstitutional.

The Constitution of Illinois makes no difference between property owned by individuals and that owned by corporations. But the revenue law of 1872 appears to have been framed for the purpose of punishing persons who had invested their money in public improvements. For the accomplishment of this purpose, the State Board of Equalization was vested with the powers of an assessor and legislature. Under this law every individual property owner can be heard to show that his property has been assessed too high or that of his neighbor too low, and the assessment of an individual's property cannot be raised without giving notice to the owner. Railroad companies, however, have no right to be heard, and assessments of their property could be, and were, raised without any notice and without any evidence. Corporations were allowed no day in court, no right to be heard anywhere, by anybody, at any time. The Railroad Company, under this law, was obliged to make a return of all its property, in which the description and value were given, under oath. The property was valued by the Company at $1,088,749.71. The Board of Equalization, without any notice to the Company or any of its officers, raised this valuation to $4,632,-782. Had this property belonged to an individual, the law would have compelled the Board to give him notice, and he would have had an opportunity to have contested the assessment.

Under this law the Board of Equalization has the right to arbitrarily increase or decrease any assessment on the property of a railway corporation without having any evidence and without giving any notice to the parties owning the property. The

moment these taxes are levied, being in the nature of a judgment, they become a lien upon the property, and yet the owner has no right to make any defense, no right to compel the Board of Equalization to assess his property according to some standard of value placed upon the property of individuals; he has no redress at law or in equity; he has simply to pay the tax.

It is claimed by appellants that the Board of Equalization can put such value upon property as it may see proper, no matter how reckless its action may be, no matter by what caprice it may be governed; that the assessment is absolutely binding; that it cannot be corrected by any court of the State of Illinois, nor by any court; that the owner of the property is wholly without remedy; that the State courts are powerless to aid him and that the federal courts have no jurisdiction, although such owner may be a citizen of another State.

It is also insisted by the appellants that the sworn return of the officers of the Railway Company is not binding upon anybody; that the value thus placed upon the property can arbitrarily be set aside and ignored by the Board of Equalization and another value placed upon it without any regard to its real value, and that such value cannot be increased or decreased by any court or any tribunal in the United States. They admit, however, as they must, that as to all property, other than that owned by incorporated companies, no assessment can be raised without notice to the owner. They also admit, as they are forced to admit, that every individual has not only the right to be heard but has the right of appeal; while every corporation is denied both of these rights.

The appellants claim that the assessment placed upon the property by the Board of Equalization is not subject to revision; that the Board can act in secret, increase assessments at will, to any extent, with or without any reason, and that their action in that behalf is not subject to review or correction by any tribunal whatever. This doctrine, according to our ideas, is contrary to the usages of a republican government, tyrannical, oppressive and infamous.

The law provides that private persons must have notice; and further, that the return made by a private individual is conclusive until evidence is heard showing the return to be incorrect. There can be a hearing; evidence can be heard; the return can be corrected in accordance with the evidence. A railway company is bound to make a return under oath, which return has no force or legal validity anywhere; can be changed by the mere caprice of the Board of Equalization. The railway company, having no day in court, is not allowed to know when or where its case is to be tried, or the assessment to be made, while the persons who pretend to assess the property under oath never saw it, and the owners of the property are not allowed to see them: while in every rule laid down for the protection of the individual citizen the railway companies are carefully excluded.

Section 105 is as follows: "Said board shall assemble at the State capital on the second Monday in the month of August, annually, and examine the abstracts of property assessed for taxation in the several counties of this State, as returned to the Auditor, and shall equalize the assessments as hereinafter provided; but said board shall not reduce the aggregate assessed

valuation in the State: neither shall it increase said aggregate valuation, except in such amount as shall be reasonably necessary to a just equalization, and not exceeding one per cent. on such aggregate assessed valuation; *but this rule shall not apply to railroad property.*"

Suppose the valuation of all property except railroad property, to be $150,000,000, and that of railroad property $50,000,000, then under this section the Board could raise the aggregate valuation to $202,000,000. But as the Board is only prevented from from raising or reducing the aggregate assessment to exceed one per cent., it has the right to increase or decrease railroad property any per cent. that it may desire, so that the aggregate valuation is not disturbed to exceed one per cent. So in the case supposed, it could decrease all other property say $50,000,000, leaving that assessed at $100,000,000 and increase the railroad property to $102,000,000, making the aggregate $202,000,000. Under this section, the property of corporations in Illinois is entirely in the power of the Board of Equalization.

This Board, as it is claimed by the appellant, is a tribunal from which there is no appeal, and before which no evidence can be adduced on behalf of a corporation; a court that sits with closed doors; that gives no notice; that keeps no record of the facts upon which its decisions are based; before which no corporation is allowed to appear; and the decisions of which are final and conclusive. And this claim is based upon the assertion that the revenue law of 1872 is justified by the second clause of the first section of Article IX of the Constitution which provides for taxing peddlers and others.

DOES THE REVENUE LAW OF 1872 PROFESS TO BE A LAW TO ASSESS AN EXCISE OR A LICENSE TAX?

The decisions of the Supreme Court on similar provisions of the constitution of 1848, apply to this section, except as modified by other provisions of the same instrument. The constitution of 1848 did not forbid the commutation of taxes; the constitution of 1870 (Sec. 6, Art. 9,) forbids the release or commutation of any part of the state tax. It also forbids the legislature from imposing taxes upon municipal corporations, or the inhabitants or property thereof for corporate purposes, and requires corporate taxes for the payment of corporate debts "to be uniform with respect to persons and property within the jurisdiction of the body imposing the same," (Sec. 10, Art. 9) cutting off release or commutation of municipal taxes. This is a new provision, absolutely requiring uniformity in the levy of all county, town, and corporation taxes, and forbidding, as to such taxes, any scheme which assesses for such purposes on the basis of linear measurement of a railway track. If a railway has steel rails in one county, with right of way one hundred feet wide, and iron rails in another county, with a right of way sixty feet wide, the linear system of apportionment of value is in violation of this constitutional provision, as it transfers values from one jurisdiction to another. Such a statute violates the principle of uniformity in the same manner, and to the same degree, as the system by which benefits and damages under special assessment laws were apportioned according to the front foot. The rule of uni-

formity applied by the Supreme Court to corporate taxation and special assessments under the constitution of 1848, is recognized and enforced by this constitutional provision.

The first section of the revenue article is limited to taxation for state purposes, and if by it the value of railroad property may be distributed for taxation according to the length of the main track, it gives no authority for such a distribution for corporate taxes. It provides for an *ad valorem* tax. It is designed to reach by such a tax, tangible property alone, or intangible property which has a value that can be practically determined. It was not the design of this section to reach the value of rights of action or of special privileges in regard to business or occupation, which have no easily determined value. The taxation of these intangible rights of value are provided for in the latter part of this section, which authorizes the general assembly to tax certain occupations and interests or business, and persons or corporations owning or using franchises or privileges in such manner as it shall from time to time direct, by general law, uniform as to the class upon which it operates. This clause of the section contains a limitation upon the legislative power granted under the old constitution. While prior to July, 1870, the power to impose a license tax of this kind was limited only by the discretion of the legislature, was not required to be uniform, and might be imposed by special and local laws, it must now be imposed "by general law, uniform as to the class upon which it operates." This section provides for two systems of taxation—a tax by valuation on property whose value is capable of

determination, and a license tax on business interests and special privileges. The assessment of values is to be determined by the persons to be elected or appointed by law; the excise or license is to be levied by the general assembly.

The direct tax on property was designed to reach only property which has a determinable value. As was said by the Supreme Court, "One may have a property in a patent right or in a copyright, which is as much ideal as is a right of action. * * * Some properties are so intangible that they cannot practically be reached, or so imaginary in value that they cannot be justly estimated. This may be so of a copyright, or a patent right or a franchise, all of which may have value, and are therefore properties; and yet, so far as we are advised, no state has ever undertaken to make them the *subjects of direct taxation.*"

People v. *Worthington*, 21 Ill. 172.

This simply reaffirmed the decision of the same court in *People* v. *Thurber*, 13 Ill. 557, that the license tax upon callings, franchises and privileges is "not a tax upon property, but is a burden imposed upon the agent for the right of exercising a franchise or privilege."

It was again recognized in *Ill. Mutual Ins. Co.* v. *City of Peoria*, 29 Ill. 183, the Court holding: "This license money is in the nature of a tax, and is so designated by the constitution, which expressly authorizes the tax to be imposed upon all who exercise a franchise." Also in *Ducat* v. *City of Chicago*, 48 Ill. 181, which justifies a similar tax as a license tax.

The distinction, we claim, was clearly recognized in *Provident Institution* v. *Massachusetts*, 6 Wall. 631, where the Supreme Court of the United States held:

"Franchise taxes are levied directly by an act of the legislature, and the corporations are required to pay the amount into the state treasury. They differ from property taxes, as levied for state and municipal purposes, in the basis prescribed for computing the amount, in the manner of assessment, and in the mode of collection, and they are in lieu of all other taxation, state and municipal. Comparative valuation, in assessing property tax, is the basis of computation in ascertaining the amount to be contributed by an individual, but the amount of a franchise tax depends upon the business transacted by the corporation and the extent to which they have exercised the privileges granted in their charter. Unlike as the systems are in every particular it seems to be a work of supererogation to point out the differences, which are radical and substantial."

It was in accordance with this principle, that the same Court held that a tax on the capital stock of a railroad running through Delaware and Maryland, apportioned in Delaware according to the ratio of its length in Delaware to its total length, was a franchise tax, and not a tax on property. That if the tax was upon the shares of the corporation, it was a tax on property held by non-residents and invalid. That if it was a direct tax on the property of the corporation, if the proportion of the tax on the property in Delaware on the valuation estimated by mileage, showed a valuation greater than the actual value of the

property within that state, the tax must necessarily fall upon property out of the state, and there would be difficulty in sustaining the tax. The Court sustained the tax as a franchise tax, and not as a tax by valuation, proportioned according to the mileage of the road.

To determine the character of the tax it is necessary to see what it is *in fact* levied upon, and not what it professes to be levied upon. There is in fact no effort to tax the franchise as such. The language is "the capital stock including the franchise." No rule has been adopted by the Board of Equalization or by the legislature by which to ascertain the value of the franchise apart from the capital stock. It seems clear that the tax sought to be collected is simply a property tax, that is to say, a tax according to valuation is sought to be levied and collected upon such property valuation. So far as we know, there is no law in Illinois for taxing franchises. But the constitution provides for taxing persons using franchises.

The bill shows that the railway company was chartered by the State of Illinois. This charter is a contract between the State and the company. Certain powers were conferred by the State upon the company in order that the company might accomplish certain objects, and in consideration of the powers so conferred the company agreed to do certain things. The legislature entered into this contract because the public good would be promoted thereby. Is it competent for the State to demand that the company pay a fine, a penalty, or a license fee, for doing the very thing it agreed to do? Can the State demand that the company perform its part of the contract and at

the same time impose a penalty upon the performance? The State has the power to compel the railway company to comply in all respects with its contract. Can the State at the same time compel the company to pay a fee for the privilege of complying with the contract? As a general thing, penalties have been imposed on account of some failure to perform a known duty. Now it is gravely claimed, that to perform a contract according to its terms renders a railway company liable to pay duties, excise taxes, license fees, and penalties.

We insist, that the simple right to exist as a corporation cannot be taxed under this law, unless such right is in fact of some value. A franchise is no doubt a kind of property, and liable, like other property, to be assessed and taxed. But when the franchise is without value—when the stock of the corporation has no value in excess of the tangible property, the franchise cannot be taxed.

When the property of a corporation has been taxed, the stock cannot be; and when the stock has been, the property is exempt. So in this case, the property having been taxed, "the capital stock, including the franchise" cannot be taxed under the plea that it is an excise. And there being no law under which the franchise can be taxed separately as property, the present assessment is of necessity illegal and void.

"To tax the real and personal property and the stock, would be a double tax, and is therefore illegal."

Gordon v. *Baltimore*, 5 Gill. 231.

To tax the real and personal property, and "the capital stock, including the franchise" is a double tax.

If this tax is justified under the power to tax peddlers, etc., then it must appear that it is "uniform as to the class upon which it operates." How is it possible to make a tax assessed in this manner *uniform* as to the class upon which it operates? It may be uniform as to one corporation, and as to all corporations that are in the exact condition in all respects; that owe the same debts, have the same amount of tangible property, and the same degree of prosperity or adversity. Under these conditions, no class could embrace more than one corporation.

The only tax authorized by the act is a tax upon *property*, which must be by valuation, and so far as the franchise is an element entering into the value of the tangible property, it has been assessed in the assessment of the tangible property, and cannot again be assessed, as this would, to that extent, be a double tax.

Besides, under the laws of the State of Illinois any and all can have a franchise to build a railroad from any point to any point within the State. Therefore, a franchise in the State of Illinois to build a railroad can have no market value. Any number of persons, not less than five, can obtain all the franchises necessary to build and operate a railway. The State no longer gives franchises to particular persons, but asks all to come and take them, without money and without price. If franchises are so very valuable, as is contended by the appellants, we see no reason for any man remaining poor in Illinois. At an expense of five dollars he can become a franchise-millionaire. Anybody can get a franchise the next day to build a railroad right along by the side of his company; and yet,

according to the appellants, his franchise would be just as valuable as it was before. The undertaking might prove disastrous; the debts might become enormous; the stock entirely worthless, and the tangible property depreciated to the last degree, but, under the rules adopted by the State Board, the value of the franchise, in spite of debt and disaster, would steadily rise, so that what he lost in property would be gained several times over in franchise.

III.

THE TAXING POWER CAN ONLY BE EXERTED UPON PERSONS AND PROPERTY WITHIN THE JURISDICTION OF THE BODY IMPOSING THE SAME.

"Taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

Art. 9, Sec. 9, Const., 1870.

This provision is a restriction.

Harward et al. v. *St. Clair Drain. Co.*, 57 Ill. 130.

"The principles of 'equality' and uniformity are indispensible to all legal taxation, whether general or local."

The City of Chicago v. *Larned et al.*, 34 Ill. 203.

The act of 1872 is unconstitutional, because it directs property to be taxed without regard to its actual *situs* not only, but provides that certain coun-

ties shall impose taxes upon property that never was within the jurisdiction of such counties.

Section 42 of the same act of 1872, provides as follows: "Such right of way, including the superstructures of main, side, or second track and turnouts, and the stations and improvements of the railroad company, on such right of way, shall be held to be real estate for the purposes of taxation, and denominated 'railroad track,' and shall be so listed and valued."

* * * * * * * *

The next section provides that, "The value of the 'railroad track' shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city, bears to the whole length of the road in this state."

We most emphatically deny the right to apportion what is called the "railroad track" in this manner. We insist that taxes can only be imposed by the body within whose jurisdiction the property is situated. Suppose a road terminating in Chicago passes through two counties in this state. Suppose it has a depot, a large number of side-tracks and turnouts, and other improvements in Chicago, of the total value of two million dollars, and that the portion of its main track in the other county is just as long as the portion in the county of Cook. And suppose further, that the track in the other county was only assessed at fifty thousand dollars. Upon what principle of taxation are these sums added together, and one-half of the whole amount given to the other county? The Chicago and North-Western Railroad is an example in point. Its track is of about equal length in the counties of Cook

and McHenry. Where is the right to take one-half of all that company's property situated in the county Cook, and subject it to taxation in the county of McHenry? Inconsistencies like this will be met on every railroad in the State. Suppose a road has three hundred thousand dollars worth of property in the county of A, and one hundred thousand dollars worth in the county of B. And suppose the local rate of taxation is much higher in the county of B; where is the right to take one hundred thousand dollars worth of the property in the county of A, where the rate of taxation is low, and transfer it to the county of B, where the rate is high? This distribution of the real estate we claim to be a violation of the constitution, for the reason that that clause in the constitution which provides that taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same, has been held by the Supreme Court of the State of Illinois to be a restriction.

This clause of the constitution applies as well to personal property as to real estate. It has been expressly decided many times that a tax cannot be levied for county or township purposes on property which is not subject to the jurisdiction of the authority levying the tax.

Marshall et al. v. *Sillimnn et al.*, 61 Ill. 224.
Lee v. *Ruggles*, 62 Ill. 430.
People ex rel. v. *Mayor etc. Chicago*, 51 Ill. 30.
People ex rel. v. *Salomon*, 51 Ill. 48.
Sleight et al. v. *People*, 7 Legal News, 292.

Also to

People v. *Niles*, 35 Cal. 287.
Wilkey v. *City of Pekin*, 19 Ill. 160.

City of Dunleith v. *Reynolds*, 53 Ill. 45.
St. Louis v. *Ferry Company*, 11 Wall. 431.

In the last case it is held that a ferry company chartered in Illinois, having its principal office in East St. Louis, was a resident of East St. Louis, and its boats, though making constant trips to the city of St. Louis, were not taxable in the city of St. Louis, but that the *situs* of such property was at the principal office of the company. Right here it may be well enough to remarks, that the Supreme Court of the United States refused to follow the decision of the Supreme Court of Missouri upon this question.

The Constitution of 1870, Article XI, Paragraph 10, declares that the rolling stock and all other moveable property belonging to any railroad or corporation in in this state shall be considered personal property.

Under the laws of New York, the rolling stock of railway companies is personal property; and it is held that it must be assessed in the town where the principal business office of the railroad company is.

People ex rel. v. *Cassity*, 46 N. Y. 56.
Bank v. *McKenzie*, 2 Brock C. C. R. 393.

"The principal office of the railway was in London; and at that office alone the staff of the company was stationed, and the central government of the railway carried on. That the secretary was there, and the ordinary meetings of the directors for the general purposes of the company were there held.

"Upon this evidence, we are of opinion that the London office was the only principal office of the company, and that service at the Bristol station was not service within the section above recited.

"The words, 'the principal office' indicate one particular office for the whole line, not an office for a traffic station."

Garton v. *G. W. Railway Co.*, 96 E. C. L. R. 844.

"But the common sense and plain meaning of the act (9th and 10th Vict. 295) is, that a corporation is to be considered as dwelling at the place where it carries on its business."

POLLOCK, C. B. and PARKE, B. in *Taylor* v. *Crowland Gas and Coke Co.* 11 Exch. 5, and reaffirmed in *Adams* v. *G. W. Ry. Co.*, 6 H. & N. 405.

"In my judgment, the word 'dwell' in this section when applied to a corporation, means something analogous to what it means when applied to an individual, viz: a dwelling at some fixed known place, not on the whole line of the railway, but where its principal business is carried on."

WILDE, B., was of the same opinion. "The 'home' of a company must be taken to be that place which is occupied as such — where their profits come to them, where orders emanate, and where the chief officers of the company are to be found."

Ibid. 408.

Also re-affirmed in

The Keynsham Blue Lias Lime Co. v. *Baker*, 2 H. & C. 730.

"Usual place of abode," as to corporations held to

be "their principal place of business, where alone they can be said to reside."

In re California Pac. R. R. Co. 11 N. B. Regr. 208.

The office where the principal financial business of the corporation is carried on is the place where its personal property is assessable. Corporations are not "houseless and homeless."

People v. *Oswego Canal Co.* v. *City of Oswego*, 6 N. Y. S. C. 677.

Cities and counties must assess the property actually within their limits, and rolling stock must be assessed at the principal business office of the corporation.

Sangamon & Morgan Co. R. R. Co. v. *County of Morgan et al.* 14 Ill. 165–7;
People v. *Niles*, 35 Cal. 267;
St. Louis v. *Ferry Co.* 11 Wall. 431–2;
People v. *Cassity*, 46 N. Y. 53.

When a statute provides that personal property shall be assessed to the owner at the place where he is an inhabitant, when a corporation has been ascertained to be the owner, and has its place of business in a town, it must be considered as liable to taxation on its personal property there.

Augusta Bank v. *Augusta*, 36 Me. 261;
Portland, Saco & Portsmouth R. R. Co. 60 Me. 200–1.

The bill in this case shows that the principal office of the Toledo, Peoria & Warsaw Railway Company is

and was in the city and county of Peoria, and that notwithstanding this fact the rolling stock of the company, for the purposes of taxation, has been distributed the whole length of the line, in all the counties, towns and municipalities, according to the number of miles of main track in each county, town or municipality.

IV.

CAN DEBTS BE TAXED?

The third section of the act of 1872, provides that "the capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization, as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, *over and above* the assessed value of the tangible property of such company or association."

Do the words "*over and above*" mean *in addition to* the assessed value of the tangible property, or do they mean, *in excess* of the assessed value of the tangible property?

We insist that this clause simply means that the difference between the value of the tangible property and the value of the capital stock, including the franchise, if any, shall be taxed. It certainly was not the intention of the legislature to tax the tangible property, and the capital stock, including the franchise besides. This would be a double tax. Neither did the legislature intend, nor did the legislature have the right to intend, to tax the debts of a corporation.

Sec. 27, Revenue act of 1872, provides that debts may be deducted from credits; but there is no pretense anywhere that debts can be taxed. It would be hard to imagine how, under the authority to tax property, a man could be compelled to pay a tax on what he owes instead of what he has. Yet, in this case, the debt has been added to the value of the stock, and the tangible property deducted. In every case where the tangible property and the value of the stock are equal, the remainder to be taxed will be just the debt. In other words: in every case, the greater the debt, the greater the tax. Of course the company must pay taxes on all its tangible property. That is right; but should it pay taxes on its debts besides?

No one will contend that a private individual can be made to pay taxes for what he owes, though he must pay taxes on what he owes *for*.

In the argument of this case it is contended by appellants that the capital stock means and includes all the property of the corporation. If this is so, why should the debt be added, and why should the tangible property be deducted? It must be admitted that to add the debt is to tax the debt. If debts cannot be taxed, then the tax in this case is illegal and void. The Board of Equalization have endeavored to tax the property of the corporation, the stock of the corporation, the franchise of the corporation, the debts of the corporation, and the corporation itself. The Board has taxed what the corporation owes in excess of what it has, as its capital stock, and what it owes in excess of what it can pay interest upon, is taxed as its franchise.

In the case of *Bellinger* v. *Gray*, 51 N. Y. 620, REYNOLDS, C., says: "It seems to have been intended to assess the plaintiff for notes issued by himself, and for which he was a debtor, and that is simply absurd." If taxes are to be paid on the bonds of the company, such taxes should be paid by those who *own* instead of those who *owe*.

In this connection we may be permitted to say that we most heartily concur with the dissenting opinion of NELSON and DAVIS, JJ., in the case of *Veazie Bank* v. *Fenno*, 8 Wal. 554, in which it is held that if both sides of the account, debit and credit, can be made available for the purposes of taxation, that "a heavy national debt need not create any very great alarm, neither as respects its pressure on the industry of the country for the time being, or of its possible duration."

V.

HOW WAS THE PROPERTY IN THIS CASE VALUED?

In the first place the company listed and valued all its property: the total value being $1,088,749.71. The tangible property was raised to the sum of $2,629,367.00. The Board of Equalization then proceeded to ascertain "the value of the capital stock, including the franchise," and ascertained that the "capital stock including the franchise" was worth $2,003,415.00.

The legislature vested the Board of Equalization with power to make and adopt rules for ascertaining the value of "the capital stock including the fran-

chise," and the Board did make the following rules, viz:

"*First.* The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt, excluding from such debt the indebtedness for current expenses, shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies or associations.

"*Second.* From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property respectively of such companies and associations, such equalized or assessed valuation being taken in each case as the same may be determined by the equalization or assessment of property by this board, and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess respectively against companies and associations created under the laws of this State."

Admitting for the sake of the argument that the Board of Equalization had the right to assess the property, and had the right to adopt certain rules by which the value could be ascertained, the question then remains as to whether these rules, if followed, can by any possibility comply with that provision of our constitution, to the effect that all property shall pay a tax in proportion to its value. Let us see whether by following these rules we can by any possibility arrive at the fair cash value of the "capital

stock including the franchises " of any railroad company in the world.

To illustrate the wisdom and justice of these rules we will suppose two cases for their application:

RAILWAY COMPANY NO. 1.

Fair cash value of the shares of capital stock	$00,000,000
Fair cash value of debt	10,000,000
Total	$10,000,000
Tangible property	$10,000,000
Value of franchise	Nothing.

RAILWAY COMPANY NO. 2.

Fair cash value of the shares of capital stock	$10,000,000
Fair cash value of debt	00,000,000
Total	$10,000,000
Tangible property	$10,000,000
Franchise	Nothing.

In the first case the railway company owes $10,000,000, and its stock is without value. In the other case, the railway company owes nothing and its stock is worth $10,000,000; and yet the franchises are of equal value.

It is impossible for us to even conceive of a case where these rules would be applicable. The reason is obvious enough. The value of the stock depends upon the indebtedness of the corporation, the value of its property and its net profits. Debt decreases, while property and profits increase the value of stock. We can imagine but one way of finding out the value

of what is called "franchise," and that is to deduct from the value of the stock the tangible property, and the remainder, if any, is probably the value of the "franchise," or undertaking. To add the debt to the stock must of necessity produce an erroneous result.

A stockholder has a right to three things: First, to his voice in the management of the affairs of the company; Second, to his share of the dividends, and Third, to his portion of the assets upon the final winding up of the company. The property, however, is bound for the debts, and therefore every dollar of debts tends to decrease the value of the stock. Every dollar of debts tends to decrease the value of the franchise. The value of the franchise must affect the value of the stock. How then can the value of the franchise, or the value of the stock be found by adding the value of the debt to the value of the stock and deducting the tangible property? No man can even imagine a case where these rules adopted by the Board of Equalization could apply.

The mistake of adding the value of the debt to the stock is fundamental, and necessarily renders such assessment an absurdity.

We are told that the debt does tend to show what the property cost, and in that way the board could guess at the real value.

The cost of an article is no criterion of assessment; the question being not what it cost, but what it is really worth.

Chicago & Northwestern Ry Co. v. *Supervisor of Boone Co.* 44 Ill. 241.

The true way in which to ascertain the value

of the franchise over and above the tangible property of the corporation, is to deduct the tangible property from the actual value of the stock, and the remainder, (if any), is the value of the franchise. The true way to ascertain the value of the stock, "including the value of the franchise," is to ascertain simply the value of the stock. For the obvious reason, that the value of the franchise necessarily enters into and becomes a part of the value of the stock, and the value of the stock necessarily includes the value of the franchise and the value of the tangible property. The Board of Equalization lays down certain rules to ascertain the value of "the capital stock, including the franchise," but no way is pointed out by which the value of the *franchise* can be ascertained. The attempt is made to find the value of both in the aggregate. There is no assesssment of the capital stock, nor of the franchise, except in the aggregate. In order to find the value of this aggregate, the board adds what the company *owes* to the value of the stock, and deducts its property. Would it not be as well to add the value of the property to the value of stock, and deduct the debts? In the case at bar the tangible property, according to the company's valuation, is $1,088,749.71; the debt is some $6,450,000.00, and the stock is worthless. This mode would leave the company without any taxes to pay. We all admit that taxes must be paid on tangible property, whether the company is in debt for such property or not. But we do not admit that the company can be made to pay taxes on its debts, on its property, on its capital stock, and on its franchise.

We contend that the debts have nothing on earth

to do with the calculation; that the amount of debt has, and can have no effect upon the value of the tangible property for the purposes of taxation. We also contend that the debt does affect the value of the stock, and that the market value of the stock does in a certain degree, depend upon the amount of the debts of the corporation; that the effect of this debt is determined by the market value of the stock. Consequently, the board in finding the value of the stock, had no right to take the debt into consideration. The value of the stock is a simple fact, and cannot be ascertained by additions, multiplications and substractions of debts and franchises. The question is: What will the stock sell for? All the questions of debt, dividends and tangible property are answered when the market value of the stock is ascertained. The buyers and sellers of stock are supposed to take all these things into consideration. They are supposed to know something about the debts, the tangible property, the probable dividends, and the prospects of the corporation. All these things determine the value of the stock. It was extremely easy for the Board of Equalization to ascertain the value of the stock of this company. It was returned as worthless; it had no market value, and the board must have known it, if any inquiries were made upon the subject. It was equally easy to ascertain the value of the franchise. The return of the company showed that the net earnings were not sufficient to pay the interest upon the bonded debt. Where a company cannot pay the interest on what it owes, what is the value of the franchise?

"Where a tax is declared to be upon franchises, and

privileges granted, *if there are no surplus earnings, there can be no tax.*"

"All franchises are not of equal value. One corporation may enjoy a monopoly, and another be subject to competition with rivals, thus being less valuable. In some instances the value of the franchise would depend upon the nature of the business authorized, and the extent to which business was given to multiply capital for its prosecution. Under such circumstances it would be expected that the legislature would prescribe some equitable test, or rule of valuation, which should guide or control the estimate of the assessors in fixing the amount of the tax. It can hardly be denied that a fair measure of the value of the franchises of corporations would be the profits resulting from their use; and in adopting such a rule of estimate, no one could justly complain of its being unequal in its effects upon different corporations, or unjust in its general operation."

Monroe Savings Bank v. *City of Rochester*,
37 N. Y. 368.

"Actual value of the capital stock depends on the ability of the corporation to earn profitable dividends. Present prosperity and probability of future returns determine the value of the franchise."

Boston & Lowell R. R. v. *Commonwealth*,
100 Mass. 403.

It seems to us self-evident that where the net earnings fail to be sufficient to pay seven per cent. interest on the capital invested, the franchise is without value. What can the right to owe more than you can possi-

bly pay interest on, be worth? How much is the privilege of investing money in an undertaking that proves to be disastrous, worth? Is it possible for the franchise to be valuable when the stock is worthless? Is it possible for the franchise to be valuable when the whole stock is worth just the same as the tangible property? Is not the value of the franchise always taken into consideration in determining the value of the stock?

In *Boston & Lowell R. R. Co.* v. *Commonwealth*, 100 Mass. 405, the court, speaking upon this very subject, says, "The value of the privilege will always be be added to the shares to which it is attached."

"The market value of all the capital stock of each corporation, after deducting the real estate and machinery, is the prescribed basis on which the calculation is to be made, and by which the excess is to be ascertained on which the assessment is laid."

Commonwealth v. *Hamilton Manf'g Co.* 12 Allen, 302.

We think it unnecessary to cite additional authorities upon this branch of the case, for the reason that if anything is plain, it is that the rules adopted by the Board of Equalization *cannot* in any real or supposed case, find the value of "the capital stock, including the franchise" of any corporation in existence.

"In ascertaining the value of stock, the assessors cannot disregard any legal rules and adopt principles erroneous in law; and where they do that, their action is subject to be reviewed by the courts."

Broadway & Seventh Ave. R'y Co. v. *Commissioner of Taxes*, N. Y. Sup. Court Rpts, N. S. Vol. 1, 636.

Did not the Board of Equalization in this case adopt principles erroneous in law? Can the court imagine rules more erroneous? Can the court imagine a case in which these rules could, by any possibility, ascertain the value of "the capital stock, including the franchise," of any company or association in the whole world?

To show the results necessarily produced by following the rules laid down by the State Board of Equalization, for ascer taining the value of the tangible property, including the franchise, we will suppose one more case. A corporation, owning a toll-bridge, owes $1,000,000. Its stock is worthless, and its property is worth just $1,000,000. Under the laws of the State of Illinois, the stockholders are liable to pay debts of the compay, at least to the extent that they may be indebted to the corporation. And in the case supposed, the stockholders have borrowed, say $1,000,000, and issued the bonds of the corporation, secured by a mortgage upon the bridge and its approaches. On money raise d bya sale of the bonds the bridge has been built. After its completion the Board of Equalization proceed to ascertain, in accordance with their rules, the value of the capital stock including the franchise.

The returns of the company show the following state of facts: They find first, that the capital stock is worthless; second, the fair cash value of the debt is $1,000,000, and that the tangible property, that is to say, the bridge, is worth $1,000,000. The tangible property being deducted from the value of the stock and debt leaves nothing. Under these circumstances, the capital stock, including the franehise, to have and

maintain, and collect the revenues of a toll-bridge, is worthless, and the company pays no tax upon its capital stock, including its franchise.

Now, suppose that in a little while thereafter, a flood in the river carries the bridge away. And in the following year the Board of Equalization, in accordance with their rules, again proceed to ascertain the value of the capital stock, including the franchise of this bridge company. They find: first, that the capital stock is worthless; second, that the fair cash value of the debt is $1,000,000, for the reason that the stockholders are individually liable and are all solvent. From this amount, to-wit: from $1,000,000, that being the fair cash value of the stock and debt combined, they must deduct the value of the tangible property. The tangible property, that is to say, the aforesaid bridge, having been carried away, is worthless. There is therefore nothing to deduct. Deducting nothing from the fair cash value of the debt and stock, leaves as the value of the capital stock, including the franchise, $1,000,000.

In other words, according to these rules, the franchise to have and maintain a toll bridge is increased $1,000,000 in value by the loss of the bridge; that is to say, the franchise to own and collect the revenues from a toll bridge is of no value whatever until the bridge is lost; and when lost, the franchise to collect the tolls thereon suddenly becomes of the value of $1,000,000.

VI.

THE PRINCIPLE OF UNIFORMITY.

The principle of uniformity in the application of the law of 1872 to the assessment and taxation of railway property has been violated in every section applicable to railways. A distinction is maintained through the whole of said act as to the manner or mode of assessing the property of individuals and that of corporations. By this act rights are given to individuals but denied to corporations. Corporations are discriminated against from the first line to the last word.

While the real estate of individuals is assessable by local assessors who are supposed to know something about the value of real estate within their locality, such assessors are not allowed to fix the valuation of railroad property of a like character. This duty devolves upon the Board of Equalization, and is a violation of the principle of uniformity. Under this law a valuation has been placed upon railroad property which is arbitrary, unequal, unjust and violative of the principles of the constitution. There is no warrant in the constitution for such a transfer of jurisdiction in regard to the property of corporations. The apportionment of the assessment of railway track by linear measurement is also an arbitary, unjust and unequal rule of apportionment, and transfers values from one town to another and from one county to another irrespective of the real value of the superstructure in any town or county.

In *Sangamon & Morgan R. R. Co.* v. *County of Morgan et al.* 14 Ill. 165–7, our Supreme Court held, that county and city taxes could only be levied on the actual value of property within the jurisdiction of the body imposing the tax. That the value of the railway track cannot be apportioned by the length of the track, but that "each county must assess and tax the real property within its limits." That rolling stock which merely passes through a county is not taxable there, but must be taxed at the locality of the principal business office of the corporation, which is its residence.

This decision is decisive as to the illegality of the county, town and municipal taxes assessed against the railway represented by appellees.

The revenue law of 1872 violates this principle of uniformity, and distributes not only the rolling stock, but the capital stock, *pro rata*, acording to the mileage of the main track. The rule for state purposes in regard to other property, is to tax it at the residence of the owner, if a resident, and in regard to other corporations, at the principal business office.

City of Dunleith v. *Reynolds et al.* 53 Ill. 50.

In the case of *Primm* v. *City of Belleville et al.* 59 Ill. 142, the court held that equality and uniformity of taxation "must be applied, not only to the rate of taxation, and to the district to be taxed, but also to all the property subject to taxation."

Can a system of taxation be called uniform where only one owner of real estate has his property assessed by local assessors; has a right to be heard: the right to show that his land has been assessed too high, or

that of his neighbor too low; which gives him the right to introduce evidence and preserve a record upon which he can appeal to the courts, while another owner of real estate, a corporation, for instance, has its property assessed by a Board of Equalization, and is deprived of the right of being heard, can introduce no testimony, and is deprived even of the right of appeal?

This question of uniformity has been passed upon by other courts. The Supreme Court of Wisconsin, in *Knowlton* v. *Supervisors of Rock County*, 9 Wis. 389, held: "'The rule of taxation shall be uniform,' that is to say, the course or mode of procedure in levying or laying taxes shall be uniform; it shall be alike. The act of laying a tax on property consists of several distinct steps, such as the assessment or fixing of its value, the establishment of the rate, etc., and in order to have the rule or mode of proceeding uniform, each step taken must be uniform. The valuation must be uniform, the rate must be uniform. Thus uniformity in such a proceeding becomes equality; and there can be no uniform rule which is not at the same time an equal rule, operating alike upon all the taxable property throughout the territorial limits of the state, municipality or local subdivision of the government within and for which the tax is to be raised."

In answer to the argument that the legislature had a right to create taxation districts, and provide that all the property within one district may be assessed by one mode, and without it by another,—"that, for the purposes of taxation, the legislature have the right arbitrarily to divide up and classify the property

of the citizens, and having done so, they do not violate the constitutional rule of uniformity, provided all the property within a given class is rated alike"—the court held: "The answer to this argument is, that it creates different *rules* of taxation, to the number of which there is no limit, except that fixed by legislative discretion, whilst the constitution establishes but one fixed, unbending and uniform rule upon the subject. It is believed that if the legislature can, by classification, thus arbitrarily and without regard to value, discriminate in the same municipal corporation between personal and real property within and personal and real property without a recorded plat, they can also, by the same means, discriminate between lands used for one purpose and those used for another; such as lands used for growing wheat, and those used for growing corn or any other crop; meadow lands and pasture lands; cultivated and uncultivated lands; or they can classify by the description, such as odd numbered lots and blocks and even numbered ones, or odd and even numbered sections.

"Personal property can be classified by its character, use or description, or, as in the present case, by its *location*, and thus the *rules* of taxation may be multiplied to an extent equal in number to the different kinds, uses, descriptions and locations of real and personal property. We do not see why the system may not be carried further, and the classification be made by the character, trade, profession or business of the owners. For certainly this rule of uniformity can as well be applied to such a classification as any other, and thus the constitutional provision be saved intact. Such a construction would make the consti-

tution operative only to the extent of prohibiting the legislature from discriminating in favor of particular individuals, and would reduce the people while considering so grave and important a proposition, to the ridiculous attitude of saying to the legislature, 'you shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes as the followers of different trades, professions, or kinds of business, or as the owners of different species or descriptions of property, and legislate for one class and against another as much as you please, provided you serve all of the favored or unfavored classes alike, thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust, that it will not find an apologist anywhere, at least outside of those who are the recipients of its favors. We do not believe the framers of that instrument intended such a construction, and therefore cannot adopt it."—*Ibid* p. 390-1.

Creating a line of railway into a tax district, and placing the assessment of the district, with a rule of apportionment by mileage, in the hands of the State Board of Equalization, is a gross violation of the principle of uniformity, especially when made the basis of corporate taxation.

The same principle was recognized in *Exchange Bank of Columbus* v. *Hines*, 3 O. St. Repts. 1.

"Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well

as the rate of taxation. * * The uniformity must be co-extensive with the territory to which it applies."

To the same effect is the case of *Fletcher* v. *Oliver*, 25 Ark. 289.

In this case the following language is used by the court: "Taxing by uniform rule means by one and the same unvarying standard, uniformity not only in the rate of taxation but uniformity in the mode of assessment by which the value is ascertained. There must be an equality of burden. This uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county, township, city, town or district tax it must be uniform throughout the extent of territory to which it applies."

To all this it is replied by appellees that whether the rule is uniform or not, whether the mode is uniform or not, it is a question with which the Supreme Court of the United States has nothing to do.

In the case of *Olcott* v. *The Supervisors*, 16 Wall. 690, this court uses the following language:

"It is a question of general law. It has as much reference to the constitution of any state as it has to the state of Wisconsin. Its solution must be sought, not in the decisions of any single state tribunal, but in general principles common to all courts. The nature of taxation, what uses are public and what are private, and the extent of unrestricted legislative power, are matters which like questions of commercial law, no state can conclusively determine for us."

From this decision it would seem that under our form of government, it is the duty of the federal

courts in Illinois to protect the rights and property that citizens of other states may have in Illinois. It is for the federal court to say whether the laws of Illinois are in accordance with its constitution, and with the constitution of the United States. The idea that the federal courts are absolutely bound by the action of the state courts reduces them to judicial nullities. If that idea is correct, the duty of the federal courts upon these questions is to follow, repeat and endorse the state decisions. If this view is the proper one, we hardly see why judges are necessary, as all these duties can be performed by clerks. Such, in our opinion, is not the duty of the federal court. That court was intended to guard the rights and property of the citizens of the United States in all the states in the Union, and in so doing this court has the right to examine all questions for itself, and to decide them for itself, no matter what state courts may have decided.

Gilman v. *City of Sheboygan*, 2 Black, 514;
Township of Pine Grove v. *Talcott*, 19 Wal. 675.

VII.

CLASSIFICATION ACCORDING TO OWNERS.

All the trouble and injustice has been caused by an effort to classify property according to owners. It is impossible for us to conceive why unimproved lands, owned by railroad companies, should be assessed upon a different basis from unimproved lands owned by indi-

viduals. If a classification based upon owners can be sustained, there is no limit to such classification, for the reason that no two owners will be alike in all respects, and certain peculiarities can be seized upon for the purpose of classifying their property according to the peculiarities of the owners, instead of according to the character of the property. Had railroad lands been assessed and equalized as other lands, no injustice would have been done. And the trouble with the whole revenue law is, that it is tainted from beginning to end with a fraudulent effort object and aim. This law places the burdens of the State upon certain property on account of the *owners* of such property.

Corporations are not allowed to be heard before any board for the reason that, their property has been classified according to owners, thus defeating the object expressed in the constitution of assessing all property according to one standard. The constitution provides, that all property shall pay a tax in proportion to its value; and if all property is valued at its actual worth, the constitution would be strictly complied with; or if all property was valued at half its worth, the constitution would be complied with just as strictly, because the result would be the same *i.e.* all property would pay its just proportion of tax.

But it was found impossible to have the property of the various towns in one county, or the property in all counties of the State, assessed by the same standard. To obviate this difficulty in some degree, the the law provides:

First.—For an equalization as between the individuals of each town.

Second.—For an equalization as between the towns of each county.

Third.—For an equalization as between the counties of the state.

All this is done to the end that property might be assessed by the same standard. This principle has been violated in regard to railroad property.

Section 105, in express terms, declares that railroad property shall not have the benefit of general and just equalization. The next Section, 106, provides that all property in the State shall be considered under three classes, viz.: 1, personal property: 2, railroad and telegraph property; 3, lands and town and city lots. In this manner railroad property is deprived of the benefit of equalization. It is not measured or valued by the standard applied to other property of precisely the same character, but another, a different, and an arbitrary standard is made for the valuation of railroad property. By Section 107 all personal property, except such as may be owned by railroad and telegraph companies, is equalized according to certain averages in each county, and a state average is obtained by taking the average of all the county averages of such personal property. Personal property belonging to railroads is excepted, because all railroad property, whether personal or otherwise, by Section 106, is in the second classification, which does not include any personal property whatever, ex-

cept such as belongs to railroad and telegraph companies.

By means of such classification the railways are deprived of the benefit of equalization. It is for this reason that we claim that the railroad company is not compelled to pay even upon its own valuation, for the reason that by the law of 1872, before any tax can be levied, the assessment must be equalized; and it is upon the equalized assessment that the tax can legally be levied.

We insist that the state has no right to classify property according to owners; that it is a violation of the principle of uniformity.

We further insist that if the state is not bound by the valuation placed upon the property by the officers of the railway company, that the railway company is not bound by such valuation.

And we further claim that the valuation placed upon the property by the officers of the railway company, not having been equalized with like property throughout the State of Illinois, the tax levied upon said property in accordance with the illegal assessment made by the Board of Equalization, is void.

There is another point with regard to paying the tax upon the company's valuation as regards rolling-stock. If we are correct in our view that the rolling-stock must be assessed at its *situs*, where must the Toledo, Peoria and Warsaw Railway Company pay the tax upon its rolling-stock? It has given in the value of its rolling-stock, and upon a certain proportion of that rolling-stock taxes have been levied for

the County of Peoria, in which its principal office is. Shall we pay to the County of Peoria a greater tax than it has levied against us? Shall we pay taxes upon personal, property the valuation upon which has not been equalized with other personal property of like character owned by individuals?

It seems to us almost impossible to ascertain what tax should be paid by the Railroad Company, even admitting that it is in some way bound by its own valuation. The fact that it may be bound by its own valuation does not, as we see, release the Board of Equalization from its duty to equalize such valuation with other property of like character; and where this is not done, no tax, in our judgment, can be levied upon such valuation.

Under the revenue law of Illinois, every assessment made by every officer, and every valuation put upon property by the owner, is simply to create a basis for equalization, and all such assessments and valuations must be equalized before any tax properly or legally can be levied against the property. Assessing it, or returning the valuation, is simply the first step. The second step, consisting of equalization, must be taken before any levy can be made. If the Board of Equalization had the right to leave out the valuation put upon railroad property by the officers of the railroads, in making up the equalized values for the State, would they not have an equal right to leave out any other property owned by any other class of persons? And if this is so, what necessity is

there for any equalization at all? In the nature of things, there can be no equalization unless the value of all property as given or assessed is taken into account. To leave out any one class renders equalization impossible. The great principle of uniformity is lacking; and all assessments not made in conformity to the principle of uniformity laid down in the Constitution must, of necessity, be void.

The railroad companies, by being compelled to pay on their own valuation even, will be deprived of the benefits of equalization, which would greatly reduce their valuation. To classify property according to owners, and then equalize according to owners, is contrary to the principle of uniformity and void. Besides, no tax has ever been *levied* upon the property according to the valuation placed upon it by the railroad companies. Until such tax is levied, we do not see how any court can hold that it should be paid.

VIII.

STATE RIGHTS.

Counsel for appellants contend that no matter how unjust and unconstitutional the revenue law may be, that this court has no jurisdiction for the reason that each state is sovereign in its use of the taxing power, and that the decision of the supreme court of a state is, as to such questions, final and conclusive.

We are aware of the decisions of this court upon that question, and know that in the main it has adhered to the doctrine of non-interference.

We admit that where the taxing power is exercised in accordance with the Constitution of the State, that the federal court cannot interfere. We further admit that in cases where it is doubtful as to whether the tax is constitutional, this court is bound by the decision of the State court. But where the Constitution provides for and authorizes the levy and collection of taxes upon just and equitable principles, and the law made in pretended pursuance thereof, is utterly unjust and inequitable, then we contend that this court is not bound by a decision of the State court upholding such law.

We admit that the State court should be given the benefit of every reasonable doubt. That the law must be clearly in contravention of the State Constitution.

We believe this court has the right and power to protect property in the State of Illinois, belonging to a citizen of New York, from an unjust and unconstitutional tax.

The railroads of Illinois have been built almost entirely by the capitalists of other States. Had the citizens of Illinois owned the railroads the revenue law of 1872 would never have been passed. That law was passed for the purpose of confiscating property belonging to citizens of other States. It was passed during a period of great excitement, and when in every town of the State there were organizations hostile to all aggregated capital.

The law of 1872 was the natural result of the excitement and hatred. The members of the legislature were elected on the hatred issue, and they knew that their popularity depended upon their doing injustice. It is needless to say that the law of 1872 gave them the popularity they desired.

We think that the Supreme Court of Illinois was unconciously influenced by the general feeling against corporations, and that in no other way can the decisions of that tribunal be accounted for. For a long series of years the

State court had protected the property of corporations equally with that of individuals, and the owners of railway property had perfect confidence that such protection would be continued.

The Court had in the case of *Bureau County* vs *Chicago & Rock Island Railroad Company*, 44 Ill. 27, decided that the property of corporations should be taxed upon the same basis as the property of individuals, and that no just mind could sanction a proceeding that produced a different result —that the great and dominant idea of the Constitution of Illinois was uniformity of taxation, and that "no power existed or should exist in any corporate authority to go counter to this command of the fundamental law."

In the same case it was contended by the counsel for Bureau County that the action of the Board of Supervisors—a county board of equalization—was final, and that no appeal would lie. Upon this point the Court said: "It may be that the Board of Supervisors of a county is not a Court in the legal acceptation of that term, but it has power conferred upon it, by the wanton and unjust exercise of which the most vital interests of parties before it may be rendered totally valueless. Perilous indeed would be their condition if these great interests were at the mercy of irresponsible men, bent, it may be upon inflicting injury for which they could not atone." * * * "The question is before us in all its length and breadth: Can a railroad company, by any action of the corporate authorities of a county, be required to pay more than its fair share of taxes as compared with those paid by individuals." Does the power exist anywhere to destroy the cardinal principle of uniformity of taxation so forcibly and prominently insisted upon by the Constitution? It seems to us that there is something so monstrous in the proposition as to be indefensible by fair argument."

This decision is exactly in harmony with the Constitution of 1848, and the present Constitution. It upholds the great principle of uniformity, in the absence of which, taxation becomes confiscation. This decision was followed for years, and upon the faith of such decisions millions of dollars have been invested in railway property in Illinois.

It is now held by the Supreme Court of Illinois, that the Board of Equalization are not bound by the great principle of uniformity—the central and dominant idea in the Constitution—and that no power exists, or should exist, to prevent any corporate authority from going counter to this command of the fundamental law. It now holds that no just mind, with the Constitution before him, could fail to sanction a proceeding by which a corporation was compelled to pay a greater proportion of the revenue than is demanded of individuals. It now holds that although uniformity is the vital principle, the dominant idea of the Constitution, no court has the power to enforce this vital principle—this dominant idea. It now solemnly decides that the power to compel A to pay 40 per cent. more taxes on his property than B shall pay on property of equal value, is lodged in the State Board of Equalization. In the case first cited the court say that "the power to compel one man to pay a greater tax than another upon property of the same value nowhere exists, and if it did, it would be so revolting in its exercise to the lowest sense of justice with which our species is imbued, as to justify any and every lawful expedient for relief against it." The same court now decides that the exercise of such a power is, not only not revolting, but is in exact accordance with the great principle of uniformity.

Which decision is this court bound to follow?

We insist that this court is at liberty to follow the decision in accordance with the constitution of the state.

The Board of Equalization assessed the capital stock of the Toledo, Peoria and Warsaw Railway Company at something over two millions of dollars. The officers of the Company under oath had returned the capital stock, *i. e.*, the shares of stock, as entirely worthless. This sworn return was all the evidence before the Board. There was no market value for the shares, and the Board of Equalization knew that fact. They knew that the stock was of no value whatever, and yet they assessed it for the purpose of taxation at over two millions of dollars. And this outrage is justified upon the ground "that it was never held or supposed that absolute accuracy as to value was required." To make a mistake in the value of stock of two millions of dollars, is justified on the ground that absolute accuracy is not required.

We say to the Supreme Court of Illinois that stock, destitute of value, has been assessed at two millions of dollars, and ask that court to protect us from the outrage. To this appeal the Supreme Court replies that "entire accuracy is difficult in valuing any kind of property," or "that the tax was levied by a general law uniform as to the class upon which it operates."

We say to the court that we are about to be compelled to pay a tax upon nothing, and that the nothing was assessed at two million dollars. The court answers, that "the law is well settled that assessors, in judging of the value of property, act judicially, and that although they may err and assess it too high, that this will give a court no jurisdiction to restrain the collection of the tax."

To prove that the Board of Equalization in assessing property acts judicially, the court refers us to the case of *Weaver* v. *Devendorf* 3 Denio, 119, wherein it is held that the writ of certiorari lies only to officers exercising judicial powers, and in the next moment we are told that the writ

does not lie to the Board of Equalization, and that the action of that august tribunal cannot be reviewed in any way, nor brought by *certiorari* before any court, nor in any way appealed from.

The Supreme Court of New York holds that assessors act judicially, because as to them, the writ of *certiorari* will lie, and the Supreme Court of Illinois holds that the Board of Equalization act in a judicial capacity, because the writ to them will not lie.

Is this Court bound by the decision of the State Court, or by the reason given for the decision?

If it is possible for an assessor to make a fraudulent assessment, surely an assessment of worthless stock at two millions of dollars is a fraudulent assessment.

In the case of *The Republic Life Ins. Co.* v. *Pollak*, reported in the Chicago *Legal News* of July 24, 1875, the Supreme Court of Illinois holds that "fraud vitiates all acts, and this as well as others, and where the officer acts with a fraudulent purpose to the injury of the tax-payer, he may be relieved from the effects of the fraud."

In the same case is the following: "But if, from the incompetency, recklessness, or partiality of the officers, the law has not been duly administered, that forms no ground for relief." The question arises as to which part of the decision is binding upon this Court.

In the case of *C., B. & Q. R. R.* v. *Cole*, reported in the *Legal News*, July 3, 1875, the Supreme Court of Illinois takes exactly the opposite ground, and says, speaking of the action of the Board of Equalization in assessing property, "But whenever the Board undertakes to go beyond its jurisdiction, or to fix valuations through prejudice, or a reckless disregard of duty, in opposition to what must necessarily be the judgment of all persons of reflection, it is the duty of the courts to interfere, and protect tax-payers

against the consequences of its acts. * * * The valuations must be the result of honest judgment, and not of mere will."

To assess worthless stock at two millions of dollars, must be "the result of prejudice, or a reckless disregard of duty," and if it is either, then this Court, acting in accordance with the State Court, can set the assessment aside.

In the case of "*The Republic Life Insurance Company* v. *Pollak*, the exact opposite is held. The Court says: "The framers of the Constitution have withheld the power to review the action of the assessing officers, and it was the manifest intention of the people in ratifying the Constitution to make the action of the assessing officers final."

Yet this same Court holds again and again, that if the assessing officers act fraudulently, their action can be reviewed and set aside.

In the case of *Sleight et al. vs the People, for use, etc.*, reported in the Chicago *Legal News*, May 29, 1875, the Supreme Court of Illinois decide "that by Sec. 5, Art. 9, Const. 1848, it is provided: 'The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property within the limits of municipal corporations, belonging to individuals, shall be taxed for the payment of debts contracted under authority of law.' And by Sec. 2 of the same article it is required "that all taxes shall be levied by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, hers or its property." Corresponding provisions will be found in Secs. 1, 9 and 10, Art. 9, of the present Constitution."

"These are limitations upon the legislative department prohibiting the enacting of laws conferring upon the corporate authorities of counties, townships, school districts, cities, towns and villages, power to assess and collect taxes for any other than corporate purpses, and requiring, as an indispensable condition to the validity of all taxes levied and collected for corporate purposes, that they shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Harward v. St. Clair Drainage Co., 51 Ills., 130; Primm v. City of Belleville, 59 id., 142; Trustees, etc., v. The People, 63 id., 300.

"A tax cannot be levied for county or township purposes on property which is not subject to the jurisdiction of the authority levying the tax; and the property of the railway company in the county, and in each township, must be subject to the same taxation as other taxable property there situated for county and township purposes; and no property can be held for the payment of a county or township tax which is not levied for a corporate purpose."

This decision was rendered on the 30th of January, 1875, and is the last decision of our court upon that question. With this decision we most heartily concur. It is held that property in one county or town cannot be taxed in some other county or town—that you cannot take real estate situated in Chicago and render it liable to be taxed in Cairo.

We admit that the State court has also decided the other way; but we insist where there are two decisions, one of which is reasonable, and the other absurd, that this court has the right to disregard the absurd one and follow the other.

In order to show fully the absurdity of the revenue law of 1872, it is only necessary to read the case of *Adsit* v. *Lieb*, 76 Ill. 198.

In this case Adsit had in cash $47,300, and returned that amount to the assessor. The Board of Equalization raised the Chicago assessment sixty-eight per cent. Adsit lived in Chicago, and his assessment on $47,300 in cash was raised for the purpose of equalization, to the sum of $79,464. This was done when the basis of assessment was declared to be sixty per cent. of the fair cash value of the property. Had the assessment been properly made the assessment would have been $28,380.

Yet relief is denied, and the reason given is that Adsit should have appeared before the County Board and had the assessment corrected.

In other words, he had a remedy at law, or he could have sworn when he made his return that the fair value of $47,300 in money, was $28,380 in cash.

The same reasoning might be used against the railway companies if they had ever had an opportunity of going before the Board and having assessments corrected; but the court decides that the Board of Equalization was not bound to hear us, neither was it bound by our sworn return.

Since the decision in *Porter* v. *Rockford & Rock Island*, our court has, however, decided the other way.

In the case of *First National Bank of Shawneetown* v. *Cook et al.*, Chicago *Legal News*, Dec. 4, 1875, occurs the following:

"It is well settled in this State that a court of equity has the power to restrain the collection of taxes, where fraud has occurred, or where the assessment or levy has been made without legal authority.

2. *Altering assessment without notice to owner.*—The assessor has no power, after he has accepted from the owner a list and valuation of his property, arbitrarily and without notice to the owner, to alter the assessment and materially increase the valuation of his property.

3. *Power of County Board to increase assessment.*—After an

assessment of property for taxation has been made and equalized by the state board, the taxes extended thereon, and the books in the hands of the collector, it is extremely doubtful whether the County Board has any legal authority to change the assessment; but it certainly has no power to make such change to the detriment of the tax-payer without notice to him, and so far as it may increase the assessment without notice its action is void."

In the case at bar, the assessment was quadrupled without notice to the owner and without any evidence.

Our Supreme Court holds that property may be assessed by the Board of Equalization. The Board is therefore composed of assessors, and according to the last decision cited, asssessors cannot alter assessments and materially increase the value, without giving notice to the owner of the property.

To increase an assessment from nothing to two million dollars, strikes us as a material increase.

According to this decision, which is later than the one so confidently relied upon by appellants, the Board of Equalization had no right to raise the valuation placed upon the property by the Railway Company without notice.

Raising the valuation without notice, is decided to be fraudulent, and being fraudulent a Court of Equity will restrain the collection of the tax.

This decision must protect corporations, if corporations are entitled to the same protection accorded to individuals.

In the case of *Ill. Cent. R. R. Co.* v. *City of Bloomington*, Western Jurist, Vol. 2, 189, our Supreme Court distinctly holds that corporations are entitled to protection in their rights to the same extent as natural persons. "If, then, such burdens cannot be imposed upon a natural person, why or by what reasonable means can it be required of an artificial person? When brought into existence, these

bodies are created persons, so far as to become amenable to burdens, in the support of the government by taxes and the like, as natural persons, coming into and subject to the government. * * * The Legislature can exact of them no greater or higher duties than it can of natural persons. * * * One of the fundamental principles upon which all good government is constructed, and is administered, is equality of burden and protection. Any other principle is unjust and oppressive."

In this same decision the cases of *Chicago* v. *Larned*, 34 Ill., 203, *Ottawa* v. *Spencer*, 40 Ill., 211, and *Bedard* v. *Hall*, 44 Ill., 9, are cited and re-affirmed, thus, to a great extent, overruling the case of *Porter* v. *Rockford and Rock Island Railway*.

We have shown that the Supreme Court of the State of Illinois decided that the property of corporations should be taxed upon the same basis as the property of individuals; that no just mind can sanction a proceeding producing a different result; that the great and dominant idea of the Constitution of Illinois is uniformity of taxation; that no power exists, or should exist, in any corporate authority within the State of Illinois, to go counter to this command of the fundamental law.

It has also decided that a Board of Equalization for a county is not a Court in the legal acceptation of that term, but that it has power conferred upon it by the wanton and unjust exercise of which the most vital interest of parties before it may be rendered totally valueless, and that powerless indeed would be their condition if these great interests were at the mercy of irresponsible men, bent, it may be, upon inflicting injury for which they could not atone.

It has also decided that a railroad company cannot, by any action of the corporate authorities of a county, be required to pay more than its fair share of taxes, as com-

pared with those paid by individuals; that the power does not exist anywhere to destroy the cardinal principle of uniformity of taxation, so forcibly and prominently insisted upon by the Constitution.

It has decided that there is something so monstrous in the proposition that a corporation can be made to pay more than its fair share of taxes, as to be indefensible by any fair argument.

This same Court has also held that it is not bound by the great principle of uniformity, the central and dominant idea in the Constitution; that no power does or ought to exist to prevent a corporate authority from going counter to the command of the fundamental law, and that it is not monstrous to compel a corporation to pay a greater proportion of the revenue than is demanded of individuals.

It now holds that although uniformity is the vital principle, the dominant idea of the Constitution, no court has the power to enforce this vital principle, this dominant idea, in favor of a railway corporation.

This same Court decides that the State Board of Equalization has the power to make a railway corporation bear more than its fair proportion of the public burdens, provided it is done by virtue of a general law uniform as to the class upon which it operates. In other words, that injustice is in accordance with the law so long as it operates uniformly upon some particular class.

The Supreme Court of Illinois decides that the Board of Equalization acts judicially in assessing property for the purposes of taxation; and yet that this body, acting as a judicial body, is not bound by any evidence before it; that it can judicially not only act without evidence, but against all the evidence before it, and that by reason of being a judicial body, its action cannot be reviewed.

The same Court also decides that the action of the Board of Equalization can be reviewed.

It decides that an assessor cannot raise the value of property without notice to the owner; and that the Board of Equalization acts as an assessor, and that it can raise the valuation of property not only without notice to the owner, but contrary to all evidence before it.

It also decides that fraud vitiates all acts, and that a Court of Equity will relieve a tax payer from a fraudulent assessment. And yet when property which has no possible value is assessed by the Board of Equalization at $2,000,000, according to the counsel for appellants this is no evidence of fraud.

This same Court decides that real estate in one county can be taxed in another; and it also decides that real estate can be taxed only where it is situated.

It also decides that personal property must be taxed at its real and constructive situs; and it also decides that real estate can be treated as personal property for the purposes of taxation; and that personal property may be treated as real estate.

It decides that an assessment cannot be set aside on account of recklessness or prejudice; and it also decides that whenever the Board undertakes to go beyond its jurisdiction, or to fix valuation from prejudice, or the reckless disregard of duty in oppesition to what must necessarily be the judgment of all persons of reflection, it is then the duty of the Court to interfere and protect tax-payers against the consequences of its acts.

It also decides that the valuation placed upon property by the Board of Equalization must be the result of an honest judgment, and not the result of mere will.

Can it possibly be said that to place the valuation of $2,000,000 upon worthless stock was a result of honest judgment, and not of the mere will? Was the value placed upon the stock honestly by the Board of Equaliza-

tion, or fraudulently? Was it an exercise of judgment, or of simple prejudice or caprice? And yet this same Court, after having decided that the valuation must be the result of honest judgment, holds that the framers of the Constitution have withheld the power to review the action of the assessing officers; and that it was the manifest intention of the people in ratifying the Constitution to make the action of the assessing officers final.

The same Court holds that a tax cannot be levied for county or township purposes on property which is not subject to the jurisdiction of the authority levying the tax; and the same Court holds that such a tax can be levied.

It is also held by this Court that a corporation with respect to its property has precisely the same rights as an individual. Under the revenue laws of 1872 an individual has the right to go before the Town Board and complain that his property is assessed too high, or that his neighbor too low. He has also the right to go before the Board of Equalization for the county and enter his complaint.

It is admitted by the Supreme Court of the State of Illinois that the Board of Equalization must act in accordance with the evidence before it, and that failing thus to act, the tax-payer has his remedy; but a railway corporation cannot be heard. The railway corporation cannot go before the tribunal which fixed a value upon its property.

The assessment placed upon the property of an individual cannot be raised without notice; and yet the assessment placed upon the property of the Railway Company under oath by its officers can be raised, not only without notice, but without any other evidence.

The property of an individual is equalized with all other property of like character in the State. The property of a railway company, no matter of what character it may be, is equalized only with the property of other railway

companies or of like corporations. The property of individuals is equalized according to some inherent likeness or difference, so to speak, in the property itself, while the property of railway companies is equalized and classified not according to inherent likeness or difference, but simply according to its owners.

And yet the same Court decides distinctly and explicitly that the rights of corporations must be protected precisely the same as the rights of individuals, and that any other rule or law would be infamous and monstrous.

It is now claimed by counsel for appellants that this court is bound by the decision of the Supreme Court of Illinois. We again ask the question by which decision or what decisions is this court bound?

We insist that a railway company stands upon an equality with a natural person. The Supreme Court of Illinois decides that it does.

We insist that the Board of Equalization had no right to raise the valuation without notice to the corporation. The Supreme Court of Illinois decides that where the property is owned by an individual this is so.

We insist that to raise a valuation $3,000,000 above the valuation placed under oath upon the property by the officers of the railway company, is a fraudulent act upon the part of the Board of Equalization, for the reason that no notice was given and no evidence adduced.

Our Supreme Court decides that as against an individual such action of the Board is fraudulent and void, and that the individual has his remedy. We claim the same right for a railway company.

We insist that a tax cannot be levied upon property, unless the same is within the jurisdiction of the body imposing the same. The Supreme Court of Illinois decides that this is so.

We insist that the dominant idea of the Constitution is uniformity, and that a violation of this principle is a violation of the Constitution. The Supreme Court of Illinois decides also that this is true.

In other words, it has decided in our favor every point for which we contend; and it has also decided many of these points the other way.

We again ask, by which decision or decisions, is this court bound?

Counsel for appellants will claim that the Federal Court has no right to interfere with the collection of taxes in the State of Illinois; that so far as regards the imposition of taxes within its territory, the State of Illinois is supreme. That over this question the State is sovereign, and that the Federal Courts have no jurisdiction whatever.

All this is claimed under the doctrine known as "State Rights"—A doctrine that never has been appealed to except in cases where some wrong or outrage was intended. This doctrine was created for the purpose of protecting the slave trade; for the purpose of upholding the fugitive slave law; for the purpose of filling the territories of the United States with bondmen and for the purpose of justifying secession and rebellion. Read the entire history of our country, and you will find that this doctrine has never been appealed to for the purpose of doing justice, nor for the accomplishment of any good object whatever.

We deny that it is the duty of the Federal Court simply to echo the decisions of the State Court upon any subject whatever. We deny that the Federal Court was established for such a purpose. Wherever the Federal Court has jurisdiction of the parties and of the subject matter, we contend that it has a right to proceed to judgment.

In the case at bar, the property of citizens of New York, lying in the State of Illinois, is subjected to an unjust, an

unconstitutional and a fraudulent tax. The owners of this property appealed to the Federal Court for protection, and the collection of the tax was enjoined.

It is not now claimed that the tax is just. It is not now claimed that the property was correctly valued. It is not now pretended that the capital stock of the Toledo, Peoria & Warsaw Railway Company, including the franchise, was worth $2,000,000, or that it was worth anything.

The evidence taken in the case shows that the stock was entirely worthless. And yet counsel for appellants contend that such tax is not illegal, and that the same must be paid. It is shown by the evidence that the property of the railway in question is not worth half the bonds that have been issued upon it. It is also shown that all the bonds are owned by persons not citizens of the State of Illinois. It is further shown that this tax must be paid by the holders of those bonds; that it comes directly from them; that it is a blow at their security, and a blow struck in defiance of all evidence upon the subject; in defiance of the constitution of the State of Illinois, conceived and executed in fraud, utterly indefensible by any fair argument and in violation of all that is just and equitable.

RECAPITULATION.

The appellees claim and insist:

First.—That the revenue law of 1872 provides only for taxation by valuation, and has nothing to do with an excise or license tax.

Second.—That the taxing power can only be exercised upon property within the jurisdiction of the body imposing the same.

Third.—That real estate can only be taxed at its actual *situs.*

Fourth.—That the *situs* of the rolling-stock of a railway corporation is where the general office of such corporation is.

Fifth.—That personal property cannot be changed into real estate, and real estate into personal property for the purposes of taxation.

Sixth.—That indebtedness cannot be taxed as against the debtors.

Seventh.—That the rules laid down by the Board of Equalization for the ascertainment of value, cannot produce a correct valuation.

Eighth.—That the principle of uniformity has been violated.

Ninth.—That the Constitution of Illinois places the property of corporations and individuals upon an equality.

Tenth.—That by the law of 1872, corporations are denied privileges and rights accorded to individuals.

Eleventh.—That the Board of Equalization cannot disregard the sworn returns of the railway company and cannot raise the valuation, without evidence justifying it, nor then without notice to the company.

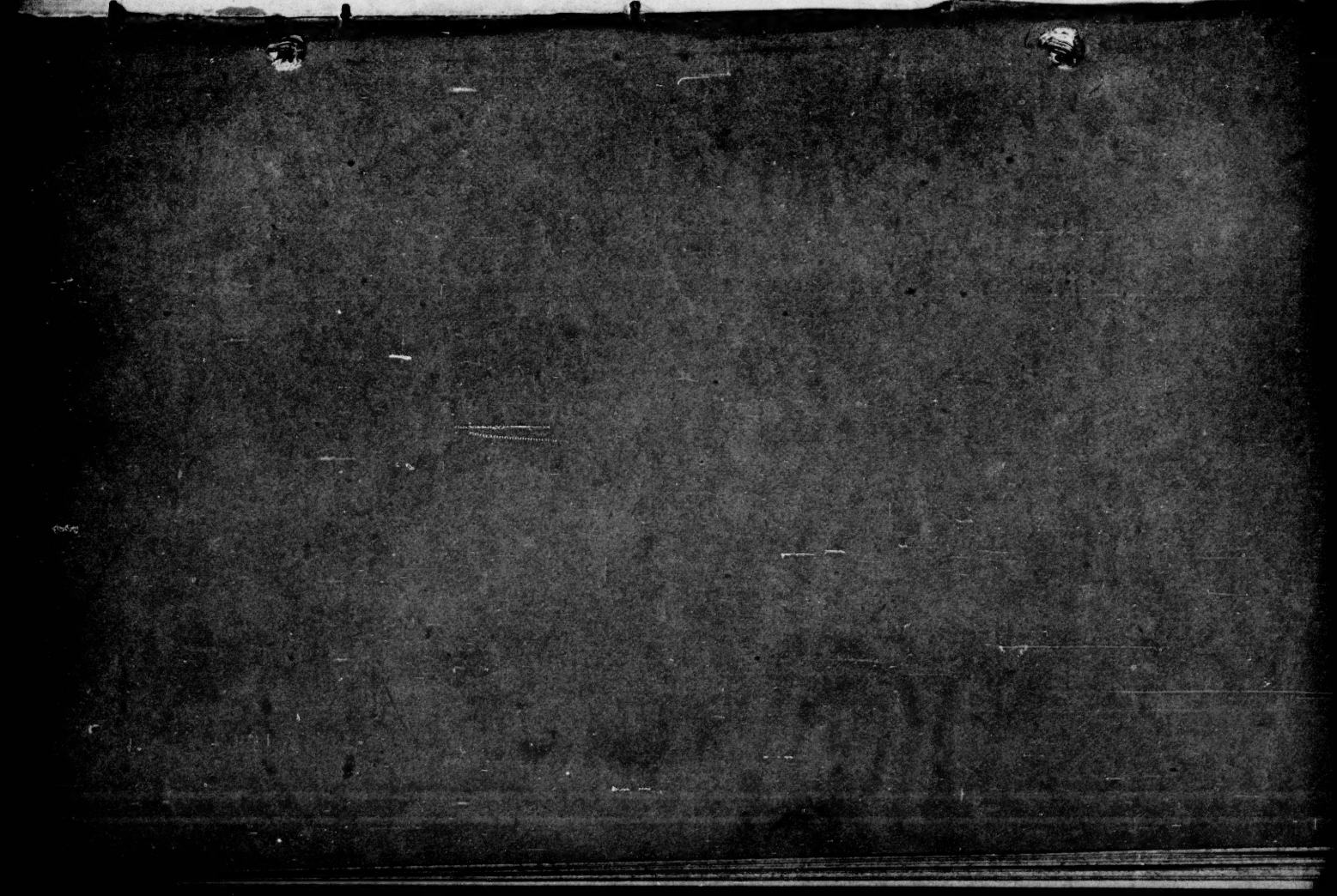
Twelvfth.—That it is unlawful to classify property according to owners.

Thirteenth.—That the assessment by the Board was fraudulent, and that said assessment was not only made without evidence, but contrary to evidence.

Fourteenth.—That the Supreme Court of the United States is not bound by the decision of the state court in this case even if such decision stood unquestioned by the state court.

Fifteenth.—That in any event, where there are conflicting decisions by the state court, that this court has the power to follow those decisions which are in accordance with the constitution of the state.

E. C. and R. G. INGERSOLL,
Solicitors for Appellees.



Mr. Justice Davis

2-575

702

IN THE

Supreme Court of the United States,

Wednesday, March 1, 1876.

IN THE CASE OF

TAYLOR, Collector, &c., *vs.* SECOR, TRACY, et al.

Mr. INGERSOLL. This is the case of Secor and Tracy against The Toledo, Peoria, and Warsaw Railroad Company and various county collectors of the State of Illinois.

The Toledo, Peoria, and Warsaw Railroad Company being unable to pay the interest on its bonded debt, being utterly insolvent, possession was taken of the property by virtue of the condition in the trust deed, and after such possession had been taken by the trustees under the mortgage an action was commenced for the foreclosure of the mortgage and the sale of the property. It was also ordered by the court, it being the Federal court for the northern district of Illinois, that during the proceedings for foreclosure the trustees in possession should report to the court their actings and doings, showing all the money they expended and all they received, so that as a matter of fact they were receivers, and the property was at that time in the possession of these trustees under the order of the Federal court.

It was stated by the attorney-general of Illinois that these cases were commenced after there had been an adverse decision by the supreme court of Illinois. This is an entire mistake. This action was commenced months before there was any decision whatever in the supreme court of the State

supreme court of Illinois, and the supreme court dissolved that injunction, and held this law to be valid. And after the supreme court of Illinois had so held, Judge Trumbull, as the attorney of the bondholders, seeking to foreclose the mortgage, applied to Judge Drummond for an injunction restraining the collection of all the tax, amounting to eighty-four thousand dollars, and the injunction was issued by Judge Drummond upon the application of Judge Trumbull, and it remains in force to-day. Surely, this assisted in exciting the hostile spirit alluded to by Judge Trumbull.

What more did Judge Trumbull do to excite a hostile public opinion? After the tax had been thus enjoined, a State officer, bent upon discharging his duty, filled with zeal and ardor, protected by the decision of the supreme court of Illinois, endeavored to make the tax out of this property.

This officer, I say, protected by the decision of the supreme court, with all the doctrine of State rights at his back, panoplied and covered by this sacred absurdity called an opinion, endeavored to collect the tax; and it was upon the application of Judge Trumbull that he appeared before Judge Drummond to show why he should not be fined for contempt of court. The attorney-general was there, and Judge Trumbull was there, demanding that the officer should be punished by fine or imprisonment, and it does seem to me that endeavoring to put a State officer in jail for following the decision of the supreme court is as apt to create a hostile public opinion as anything I have done in this case.

I simply want it understood that "honors are easy." I want it further understood that I think the Federal court did right in the Rockford and Rock Island case, which I will explain before I get through.

This case, having been commenced before there was any decision in the State of Illinois, before the supreme court of the State of Illinois had said one word upon the subject, and there not being a solitary decision in the State of Illinois, except in exact harmony with the decision rendered by Judge

Drummond in this case, I claim that I am not guilty of any discourtesy whatever to the supreme court of the State of Illinois or the people thereof.

II.

The next question to which I invite the attention of your Honors is: Is this a tax levied upon property by valuation, or is this a tax levied upon jugglers, innkeepers, vendors of ardent spirits, and other vagrants, under the second part of the first clause of the ninth article of the constitution of Illinois? I claim, and any one who will read the statute will see, that this is a tax upon property by valuation. It does not pretend to be a license or an excise-tax. More than that, the second clause of that article does not confer the authority to tax a franchise as property. If the Court will read that, they will see that it is a simple authority to tax persons using franchises, not the franchises themselves. The second clause simply authorizes a tax upon persons, upon trades, upon professions, and upon corporations using franchises. There is nowhere in that clause a word authorizing the legislature to tax the franchise itself as property. I admit that a franchise is property, and that it can be taxed like any other property, provided it is of any real value.

If this is a tax upon property by valuation, it must be levied in accordance with the great and splendid principle of uniformity. It must be in accordance with the dominant idea of the constitution of the State of Illinois, that taxes must be uniform as to persons and property. There is nothing that so commends itself to every man as that principle of justice. It is the only thing, so far as I am concerned, that I deem sacred in the wide universe—the simple principle of justice. The constitution of the State of Illinois says to the legislature: "You can tax all the property "within your territorial limits, but you must do it in accord- "ance with this shining principle of uniformity—of justice.

"You shall not pick out a particular class; you shall not "single out some particular kind of property, and, in the "name of taxation, trample upon the rights of persons and "confiscate their goods."

If taxation must be uniform, the question arises, Is the law of 1872 in conformity with that splendid principle of uniformity? And let me state right here (and if it is denied I want to have something shown to support the denial) that there is no difference between the rights of a corporation and the rights of a private individual, so far as the ownership of property is concerned, nor so far as bearing their proportionate share of the public burden is concerned. There can be none.

The idea that a State will create an artificial being, make a contract with that being, give it all the rights of a natural person, and then turn and say that that artificial being has not the same right in regard to owning property as a natural person, is monstrous. It has been declared by the supreme court of the State of Illinois that that doctrine is infamous.

Now let us see what the legislature has done. The statute of 1872 says to me, an individual, as the owner of property: "Your property can be listed and taxed in the town where "you live. If it has been assessed too high, you have the "right and privilege to go before the town board and com- "plain." What else can you do? You can also go there and show that your neighbor's has been assessed too low. What else can you do? You can appeal from that decision to the board of equalization for that county, and when you get there, you can also show that your property has been assessed too high, or that of your neighbor too low.

What else? This law provides solemnly, that the assessment on my property shall not be raised by the town board, unless they give me notice. The same law provides that the county board of equalization shall not raise the valuation, unless they give me notice; and it also provides that when I go there and complain that the property of my neighbor has

been assessed too low, they cannot raise the property of my neighbor without sending for my neighbor, and giving him an opportunity to introduce his evidence. In other words, they go according to the idea that every lawyer has had since there was a lawyer on earth, that there could not be a trial unless the other party had been notified.

That is what they allow this person to do; this individual owner of property. Now, the question is, do they allow the same thing to a corporation? A corporation has no right before a town board. A corporation has no right before a county board. Why? Because this law provides that their property shall be assessed by the State board of equalization, and not by the town or county assessors. Well, you will all say, "Of course we would have a right to go before that "State board of equalization and show that our property "was assessed too high or the property of some other rail-"road company too low." But that is a mistake. We cannot go there. We cannot be heard there; and it has so been decided by the supreme court of the State of Illinois. We cannot be heard there; we have no business there, and the proceedings of that body show, as I stated to your Honors in the outset, that they fixed the value of this property one evening and adjourned the next morning. We not only did not go there, we not only had no opportunity to go there, but the supreme court of Illinois decided that we had no business there. The only reason they give for it in the world is that the board of equalization is a *quasi* judicial body. What there is about that word "*quasi*" that would allow so much injustice to skulk behind it and shoot from it I do not know; but because it is *quasi* it is not held or bound by any rule of evidence, and because it is *quasi* it cannot be reviewed. Now, with all respect to the supreme court of Illinois, I say that any opinion wherein that doctrine is held should be denominated a *quasi* opinion, rendered by a *quasi* court, in a *quasi* case.

We cannot appear before this State board of equalization;

we cannot say one word; we are simply called upon to tell how much this property is worth, under oath, and then the State board of equalization can raise it one hundred per cent., one thousand per cent., one million per cent., not only without giving us any notice, but contrary to the sworn evidence that it has, and without taking any other evidence, without sending for any persons or any papers, and without reading the papers when they get them. They can assess this property at any price they see fit. All this can be done in the dark, with closed doors, without notice, without evidence, and contrary to evidence.

Is such an assessment according to law? Is that uniform with the manner in which they assess the property of individuals? I ask, can a system of taxation be called uniform where one owner of real estate is allowed to appear and say that it is taxed too high, or his neighbor's too low; where one owner has the right of appeal; where one has the right of review; where one can set aside the finding on account of fraud; and where another owner has no right to be heard; no right of appeal; no right of review; has simply left to him the one glorious privilege of paying whatever taxes may be levied? That I believe the attorney-general denominated a tax under a general law, uniform as to the class which it robs. That is all the uniformity there can be in such a law.

But they justify this, and the attorney-general and Judge Trumbull both justify assessing stock at $2,000,000 that both admit to be worth nothing; and why do they justify it? Because they say it is by virtue of a general law, uniform as to the class upon which it operates. For instance, if the law of 1872 had provided that there should be quadruple taxation upon the property of all non-residents, I ask you would not that be by a general law, and would it not be uniform as to the class upon which it operated? Suppose they had made a provision that all men of a certain profession, or all men who had certain colored hair, should pay so much more tax than certain other persons—would such a law be constitu-

tional? Judge Trumbull would say "Certainly; it is uni-"form as to the class upon which it operates."

If you find the value of other property by a certain mode, why not find the value of my property by the same mode? If they wished to be honest, which I deny, they would have adopted the same mode for all. What I contend is, that there was a certain excitement, a certain hatred, a certain feeling, against railway corporations in the State of Illinois; that the legislature was elected upon that issue; that they passed this law for the purpose of striking a blow at aggregated capital; that they passed this law for the purpose of making property owned by non-residents pay more and bear more than its just proportion of the burdens of the State. The law of 1872 was the result of a conspiracy against the corporations of the State.

III.

In what other way have they violated this great principle of uniformity?

The court will pardon me for going into these details. All I am anxious for in the world is that you should know these facts as they are.

The next thing these gentlemen, called the board of equalization, did, is this. They said there must be an equalization of railroad property. There is an equalization in the town as between persons; an equalization in the county as between the towns, and another equalization as between the counties of the State, all of which is proper and right. In order to have an equalization you must equalize all property of like character within the State; all the real estate must be equalized together. You cannot possibly get an average if you leave a part of it out. All the personal property in the State must be equalized together. If it is not, then it is impossible to get a correct average. The object is to equalize all the property, to the end that it may all be assessed by the same

standard. If any considerable portion is omitted the standard will be false.

What did they do in this case? Look at section 105 of this revenue law, in which railway property is excluded from the benefits of equalization; also at sections 106 and 107. What do they do? Do they put this property with all other property of like character? They do not. Do they equalize, or pretend to equalize, the real estate belonging to railways with all other real estate in the State? They do not. They take the superstructure from the land, and the consequence is that it leaves it unimproved land. Do they equalize that unimproved land with other unimproved land in the State? They do not. What do they do? They classify this property, if it please the court, not according to some inherent difference, or some inherent likeness in the property itself, but they classify and equalize it according to owners, so that, as in this case, the valuation that we place upon our right of way ourselves, with the superstructure all removed, making it simply unimproved property, is two hundred or three hundred per cent. higher than the board of equalization assessed and averaged the unimproved lands of individuals. Is that honest? Is that just to say we will equalize this property with all other property in this State, and then equalize it only with property owned by like corporations? There is another evidence of the lack of uniformity. Such an equalization is a mere pretence and a simple fraud.

IV.

The next question I come to, and it seems to me a very important question, is, How was the property in this case valued? It is pleasant to get a fact now and then in a case. How was this valued? The board of equalization met for the purpose of arriving at the value of what they are pleased to call "capi- "tal stock, including franchise," and I understand from the attorney-general that the expression, or phrase, "capital

"stock, including franchise," means exactly the same as all the property of the company. This board of equalization got together and they made some rules. I do not object to their making rules; neither do I object to the fact that the legislature authorized them to make some rules; because I say that nobody can find the value of anything—of a dozen eggs—without some rule. Consciously or unconsciously, he will have to apply some standard. But I am very much obliged to this board of equalization for having put their rules upon paper, so that we can tell whether those rules, if carried out, can come to a just conclusion.

Now, what are the rules? The rules are for finding the value of the "capital stock, including the franchise," and that means all the property; and if it does mean all the property, I wish the attorney-general to explain to this court how he is taxing under the last clause of article nine. If "capital stock, including the franchise," means the entire property, I wish to have him explain to this court how he reaches that, under the right to tax persons using franchises, as separate and apart from the idea of taxing by valuation. This board of equalization say: First, you must take the fair cash value of the stock; second, the fair cash value of the bonded debt. Add them together, and from that aggregate deduct what? The assessed value of the tangible property; and the remainder, if any, shall be considered the value of the "capital stock, including the franchise." Now, what I say is that there is no case conceivable by the human intellect where those rules will come to a proper conclusion. I not only defy the attorney-general to find a case in fact that these rules will apply to, but I defy him to imagine one, where, by any possibility, justice can be done.

Let me make myself clear. The proceedings of the State board of equalization show that they levied taxes upon property at the rate of about fifty per cent. The assessed value would be fifty per cent. of the real value. It is claimed by the attorney-general that the value of the stock, including

the value of the debt, stands for all the property. That is to say, the capital stock and franchise include and stand for all the property. Now let us suppose that it is worth just $10,000,000; the capital stock, that is to say, the shares of stock and the debts, are worth just ten millions. Now let us admit that the tangible property is also worth ten millions. What do you do according to these rules? Do you deduct all the tangible property from the fair cash value of the stock and bonds? No, sir; you deduct the *assessed* value. If you deduct the assessed value, there is bound to be a surplus; if you deduct the *assessed* value of the tangible property from the *assessed* value of the shares of the capital stock and debt, you then might do justice; but if you deduct only the *assessed* value of the tangible property from the *full cash* value of the stock and bonds, you are bound to have fifty per cent. for franchise; and so the pretence that our property is assessed at fifty per cent. on one hand is made up by clutching fifty per cent. with the other. Is that done with individuals? That is what they call a general law, uniform as to the persons on whom it operates! That is all the uniformity there is in it, and all that there can be in it.

Let us suppose another case for these rules. Here is a company, the stock of which is worth nothing; the bonds of which are worth $10,000,000. Now, put those together, and you have $10,000,000. From this you will deduct the tangible property—that is, ten millions—and what is the franchise worth? Nothing. The stock is utterly worthless, and the debt is worth ten millions and the tangible property is worth ten millions. What is your franchise worth? Nothing.

Now let us take another case. In the next road the *stock* is worth ten millions, and there is not any debt; it is a solvent institution; the stock worth par; it does not owe a cent, and has made every cent of its property by its business, and paid off a large bonded debt. The tangible property is worth ten millions. You deduct one from the other, and the franchise of that concern is worthless.

In other words, where a corporation does not own a cent on earth, and has got $10,000,000 of debt, its capital stock, including the franchise, is just as valuable as that of a corporation that owns $10,000,000 worth of property, and does not owe a cent on earth! That is a law general in its character, and uniform as to the absurdity to which it leads!

I should like to have some man with ingenuity enough to devise two cases where these rules could do justice, or one case. Think of the idea of trying to find values in that way! There is the property right before them. They can see it; they can touch it. Why not assess it? Suppose some man should say to me, "How deep is the river Potomac?" and suppose I should say, "Well, the first thing to take into consideration is the area of land that it drains; in the next place, I would like to know the average rain-fall, say for fifty years; then I would like to take into consideration the velocity of the current and the character of the soil." It seems to me that before I got half way through with that, a good man could wade out and measure.

If another should ask how large is a certain tree, would you say to him, "I will tell you; find out how many branches there are on it; how much they weigh; how many leaves there are on each, because it has been demonstrated to a certainty that it takes a tree of a certain size to put forth a certain number of branches and leaves."

All this may be true, but it is easier to measure the tree.

There is precisely the same difference between railroad companies and individuals. Here is a railroad company out West with a genius for a president. He goes to New York, or he goes to London. Hear him talk about that road; hear him talk about its prospects; hear him talk about the country through which it runs—the great prairies, the herds of antelope and deer; hear him talk about the mountains, full of gold and silver. He sells bonds and stock at par. He has a wonderful gift. What is it? It is the simple gift of turning words into cash, and when they assess his road, of course

they assess the genius of the president with it. Here is another man, who is a good practical man; has got a good road, but he has not got this gift. The consequence is, perhaps, that his stock is not worth five cents on the dollar, but the road steadily goes on, and pays every cent it owes, and makes him a fortune. The assessors should look at tangible property, and nothing else.

Now, in order to show just exactly how far you can carry this brace of rules—these Siamese-twin absurdities by which they judge of property—let me put one more case.

Say here are ten men; they are chartered—and in Illinois anybody can get a charter for a dollar to do anything; any five persons for three dollars can get a franchise to cover Illinois with railroads, and if franchises are so valuable there is no person in Illinois who has any excuse for being poor. Now suppose ten men have a charter to build and maintain a toll-bridge, with a million dollars capital—a good thing. These ten men go into it, and under the general laws of Illinois they are liable to the creditors for all they owe as a corporation. They go and borrow a million dollars and give their bonds, and they build a bridge worth a million dollars. After they get the bridge built here comes the assessor, and the attorney-general comes with him to explain, or he may bring Judge Trumbull along for fear they will not understand these two rules. The assessor asks: "What is your "stock worth?" They say "Nothing. We owe a million "dollars, and the bridge has not yet demonstrated that it can "pay any more than the interest on what we owe." The stock is therefore worth nothing. Again: "How much are "your bonds worth?" "One million dollars, because we "are all solvent, and we are all personally responsible; and, "besides, the bridge is worth a million." Very well. The stock is worth nothing; the debt is worth a million; add them together, and that is a million. Deduct the tangible property; that is a million, and the result is: "Capital "stock, including franchise," worthless. That is what the

assessor must say. The value of the stock and debt being just equal to the tangible property, the "capital stock, in- "cluding the franchise," is worthless.

The following spring the water rises and carries the bridge away. Then comes the assessor again. "Gentlemen, what "is your stock worth?" "Nothing." "What are your "bonds worth?" "Worth a million, because we are all "personally liable, and we are all solvent." That makes a million. "Now, then, I propose to deduct the tangible "property." "You need not do that; the river has done "that. There is not any tangible property here." "Well, "then," says he, "I cannot deduct it." Consequently, nothing from a million, leaves your capital stock, including the franchise, worth one million. In other words, the franchise to have and maintain a toll-bridge, as long as you have the bridge, is worthless. The moment the river sweeps the bridge away the franchise rises to the fabulous sum of one million of dollars, and this by the necromancy of the State board of equalization.

Now, if it is possible to follow anything to greater absurdity than this, I have never met it, I have never seen it; and I call upon Judge Trumbull just to explain one case in the world where the carrying out of these rules will do justice. I do not pretend that any law can be made so that everybody will pay his exact proportion of the tax; but I do claim that a law can be made so that it will not be the fault of that law. I claim that the principle of uniformity never robbed anybody, and if there has ever been injustice done by the taxing power under the principle of uniformity, it has been because the instrumentalities used to carry the law into force and effect were imperfect. That is all. And when the imperfection is due simply to the ministers of the law, no fault can be found with it. But when, as in this case, the trouble comes by carrying the law out, then we have a right to be relieved as against the injustice produced by such a law.

As I said before, the application of these rules taxes our

debts, and if, in this case, the assessment is 50 per cent. of the real value of the property, then you have assessed 50 per cent. for our debts, and you have done it under the name of "capital stock, including franchise." The attorney-general tells me that "capital stock, including franchise," means all the property, and in order to find out the value of all the property above the value of the franchise you do certain things. "Capital stock, including franchise," he says, means all of the property. Now, in order to find the value of all the property, that is to say, the capital stock and franchise, you will deduct from that the value of the tangible property. Does not the value of the franchise go into the tangible property? What is a railroad worth without the right to operate it? What is it worth to operate it if you have no right to charge any fares or freights? Does not the franchise go into every piece of iron, into every spike, into every chair, into every tie, into every car, into every locomotive, and into every revolution of every wheel? Does there not go with all, the right to charge a reasonable rate for the transportation of persons and property? Do they find out the value of this road considered *not* as a railroad? If they were going to value, for instance, a great trotting horse like Dexter, would they allow so much for the horse and so much for the motion, and say, "it is not the horse that makes Dex-
"ter valuable; it is the power to trot, and the power to trot
"does not enter into the value of the horse as such, but it
"remains separate and apart."

If there is any absurdity beyond this, outside of metaphysics, I have never heard of it. It seems to me that the right to use this railroad makes every piece of iron valuable. Can it be otherwise? Now, then, if tangible property gets its value, or any portion of its value, by virtue of the franchise, the entire value of the franchise is included in the assessment of the tangible property; and why should it be reassessed; why should it be re-taxed? Why should it be taken from the tangible property to appear again in company with capital stock?

Mr. Justice BRADLEY. Allow me to put a case. One company builds a railroad one hundred miles long at a cost of $40,000 a mile, and the road barely pays expenses. Another company in another part of the State builds another road one hundred miles long, costing the same as the other did, $40,000 per mile, and instead of only barely paying expenses it pays a dividend of ten per cent. on the cost. Is not one of these properties worth more than the other?

Mr. INGERSOLL. Yes, sir.

Mr. Justice BRADLEY. Is anything more meant than that, though they may not go the right way to get at it? That a difference exists between properties in that way seems to me evident.

Mr. INGERSOLL. Here is a road one hundred miles long that cost $40,000 a mile, and it pays dividends, and it is a good road. You go there to assess the value of that road, and you take that fact into consideration when you assess it. You cannot help it. But when you go to assess the tangible property of that road it is impossible to assess it apart from its power and its capacity, from its location, and from what it has accomplished.

Mr. Justice BRADLEY. Then the value of the franchise is included?

Mr. INGERSOLL. Of course; and in assessing the other property that has made nothing, you take that fact into consideration. In other words, every disaster the road has met with blots and stains it, and every day it has made money adds to the value of every particle of it. It seems to me that that is so plain, that there is no escape from it.

But let me show how they tax all the railroads, and I will appeal to the case in which I have stated that Judge Trumbull had a certain interest, and in which I have stated that he gave his full round measure toward exciting the hostility of the people of the State of Illinois, in proposing to have a certain officer of the State, clothed with the constitution of that State, panoplied by a *quasi* decision, put in jail for trying to collect the taxes of Illinois.

Mr. TRUMBULL. That was out of respect to the court and its orders.

Mr. INGERSOLL. Was that out of respect to the State court?

Mr. TRUMBULL. The United States court, that was in possession of the property.

Mr. INGERSOLL. But how is it that you have such a respect for the State court to-day, and at that time wished to put a man in jail for following one of its decisions?

Now take the Rockford, Rock Island and Saint Louis railroad. We were told by Judge Trumbull that the Toledo, Peoria and Warsaw railroad must be very valuable, because it cost a great deal. Take the Rockford, Rock Island and Saint Louis railroad. How much did that cost? Ten or twelve million. They built the road, and they built it anywhere, and through any town that would give them a subscription, and it went here and there with its branches, so that on the map it looks like an old fallen pine tree, with here and there an old branch, and here and there a stub, pointing toward some township subscription. The State board of equalization assessed that property for the purpose of taxation; and how much did they assess it? They assessed it so that its tax amounted to eighty-four thousand dollars. Well, my friend, Judge Trumbull, went on and had the taxes enjoined, foreclosed the mortgage, keeping the State off in the meantime, and exciting this hostile feeling. It was sold at public sale. Everybody did the best they could to make it bring something; and it brought about $1,200,000.

It was sold for $1,200,000. That is all it is worth; and the tax is $84,000, and that year property was assessed at about fifty per cent. In other words, they levied $84,000 tax on $600,000 of property. This tax is now upheld by Judge Trumbull, for the reason that it was uniform as to that road.

V.

Shall we pay taxes upon the assessment of tangible property by the State board of equalization?

I say no; and why? Because that State board raised the valuation without any notice to the company. The State board, according to this record, raised it without any evidence. They not only raised it without any evidence, but contrary to the evidence which they had before them. There was the sworn return of the railway company that the stock was worthless. There was the sworn return that the entire property was worth only $1,088,000, and I state that it was a high valuation to put on that property at that time, as it has not paid a solitary dollar of interest from that day to this.

They gave us no notice. Are we bound by such a decision as that? Are we bound by such an assessment as that? Ah! but they say you cannot set this aside unless it was fraudulent. How high do you have to assess *nothing* before it gets to be a fraudulent assessment? About how high? If $2,003,000 would not do it, would $20,000,000 do it? And I say whenever any judicial body, or *quasi* judicial body, assesses nothing at $2,000,000 it is a fraud, and it has been held a hundred times in our own State that you cannot assess taxes upon property that does not exist.

Could they raise that valuation without notice to us? I deny that there was ever such a principle held in any court on earth. Property cannot be taken from a citizen without his having had a day in court. The moment this assessment was made it became a lien, with all the validity, force, and power of a judgment. It became a cloud upon the title of the company, and to hold that a court can, not only contrary to the evidence, but without giving any notice whatever, create a lien as against your property, and to all intents and purposes enter up a judgment, a final decree, that cannot be appealed from, this, to my mind, is simply monstrous, and cannot be upheld for a moment.

In this case Judge Drummond decided that the State board of equalization, having gone on and raised this valuation without notice, acted contrary to law, and that their assessment was void.

The next question I will ask is this: Should we pay taxes upon our own valuation? One of your Honors asked last evening if we had paid the taxes upon our own valuation. It was said that we had not. I say we have not, and why? It is provided by this revenue law of 1872, as your Honors will see when you read it, that no tax can properly or legally be levied until the property has been equalized. That is a step that has to be taken before there can be any legal levy. There must be an equalization, and if you would force a railway company to pay upon its own valuation, then you would deprive that railway company of the benefit of equalization. Not only that, but you would uphold a rule not uniform. You would open a way for the board at any time to equalize *below* the valuation put by the railway company itself, which they did in this case. We placed a valuation upon our right of way two and three hundred per cent. higher than they placed upon unimproved land of the same character. Until there is a uniform rule adopted for finding or assessing the value of railway property precisely the same as property belonging to individuals, we are not bound to pay the tax.

There is another question, Where shall we pay this tax? The constitution of 1870 provides that rolling-stock shall be personal property. There is no statute of Illinois which says that the situs of rolling-stock shall not be at the general office of the company. In regard to the case read by Judge Trumbull, as to taxing the shares of national banks, that was provided for by a statute of the United States, and there is no statute of the State of Illinois at all like that. The constitution of 1870 simply says that rolling-stock shall be personal property. Then I say it follows the common law rule, and the situs of that personal property is at the general office of the railway company. Where, then, shall we pay this tax,

based upon our own valuation? Shall we pay it in the city of Peoria, or in the different townships all along the line of the road? By the record it will be seen that in some townships they raised the valuation as much as one thousand per cent.; and that in the town of Limestone we pay as much tax as in any other town, and we have no property there, and never had. In one town in Henderson county the assessment was raised from about five dollars to sixteen thousand dollars. And this shows that this system of taxation is uniform only in its violation of the principles of uniformity.

VI.

As to Following State Decisions.

Judge Trumbull will not say that we ought to pay a tax on stock that is worth nothing. The attorney-general will not say it now. I do not believe they will say it here in this Court. I do not believe they will appeal to equity to force us to pay a tax upon assessments of $2,003,000, when the record shows the property to have been worthless. I cannot believe they will insist upon that. They will say that this tribunal is bound by the decisions of the supreme court of the State of Illinois. They will say that the Federal court, so far as regards a tax decision, is a simple echo. They will say that all the duties of the Federal court in regard to a tax decision can be discharged by the clerk; that this tribunal has only one duty to perform, and that is to ascertain what the State court has decided.

It is insisted that this court is bound to follow the decisions of the supreme court of Illinois. This I deny, except when such decisions are in point, and also when such decisions are in harmony with each other, and uniform on the principle or point decided. If this court is to follow the decisions of the State of Illinois it would be very handy to know what the decisions of the State of Illinois are, and what decisions this court is bound to follow. In the case

of *Larned* vs. *Chicago* they decided squarely and fairly in favor of the great principle of uniformity. In the case of *Bureau County* vs. *C., R. I. & P. R.R.* the question came up, under the constitution which provides that property shall be valued according to its true cash value, whether the spirit of the constitution had been complied with by assessing the property at the same standard, no matter whether at its real value or half its value or one-fourth its value, provided it was by the same standard. In that case, and it is one of the noblest decisions in our State, one of the bravest and one of the best, the court say: "The question "is before us in all its length and breadth. Is there any "power in the State of Illinois to compel a corporation to "bear more than its fair proportion of taxation." And the court say unhesitatingly that there is not, and they say the proposition would simply be monstrous.

Upon the faith of that decision and of like decisions, thousands and hundreds of thousands and millions of dollars have been expended in the State of Illinois in building railways. Now it is claimed that the supreme court of Illinois decides that corporations are not on an equality with individuals; that they can be discriminated against; that their property can be assessed by a different mode; that an individual may have an appeal and a corporation no appeal. They also decide, as it is claimed, that you can take real estate from one county and transport it into another for the purposes of taxation; and they also decide, as is claimed, that the principle of uniformity does not apply to a railway corporation. They decide that uniformity as to the mode of assessment only compels uniformity as to class.

I admit that the supreme court of Illinois has decided almost every way in its effort to hit the centre in this case, and that the target at which they have been shooting is well riddled, except in the neighborhood of the centre. But occasionally, I admit, the court has hit the centre. Since the case of *Porter* vs. *The Rockford, Rock Island and St.*

Louis Railroad Company was decided, the supreme court of Illinois, in the case of *Sleight* vs. *The People*, which is alluded to in my brief, solemnly decided that you cannot take real estate from one town and tax it in another; and the question was not whether it would have to pay taxes somewhere, but it was a simple question of power to tax in the wrong town. Can you take real estate from the city of Chicago and tax it in the city of Cairo, and justify it by saying that taxes are lower in Cairo than they are in Chicago? Is that any answer? Real estate must be taxed where it actually is. I deny that there is any constructive *situs* for real estate. The supreme court has so decided. They claim that the supreme court in this case of theirs, *Porter* vs. *The Rockford, Rock Island and St. Louis Railroad Company*, decided that you could not review the action of the State board of equalization, for the reason that entire and perfect accuracy was not to be expected, and so they justify the taxing or the assessing of worthless stock at $2,003,000 on the ground that you cannot expect perfect accuracy. They also hold, or the learned gentlemen on the other side claim, that the court held that you cannot set it aside for recklessness; that you cannot set the assessment aside for partiality, but only for fraud, and that in another case that you cannot set it aside at all.

How much partiality does it take to make fraud, gentlemen, as you understand it? How much partiality must an assessor have before his acts become fraudulent, if he acts in accordance with his partiality? About how reckless must an assessor act before his action can be reviewed? When he assesses *nothing* at over two million dollars, is that reckless enough; is that partial enough; is that fraudulent enough? Is it fraudulent to raise the valuation without notice? Is it fraudulent to act contrary to all the evidence he has?

But the State court has decided since, and I am very glad of it, in the case of the *Chicago, Burlington & Quincy R.R. Co.* vs. *Cole*, which will be referred to by Mr. Browning, that this State board of equalization is not above the supreme

court of the State, and they say the assessment must be an expression of honest judgment and not of mere will, or the court will set it aside. What else do they say? In the case of *Bloomington* vs. *The I., B. & W. R.R. Co*, decided since this Porter case, that the rights of a corporation with regard to property and with regard to paying taxes are upon an exact equality with a person. They say that there is no difference, and that it is simply monstrous to hold that there is a difference.

I will also call the attention of the court to the case of the *First National Bank of Shawneetown* vs. *Cook*, in which it is held that where there has been any fraud, the assessment must be set aside. And what was the fraud in that case? It was to change the valuation put upon the property by the owner, by the assessor, without notice to the owner. And why was that a fraud? Because the owner had never been *incorporated*. If the owner had been incorporated, I suppose it would then have been no fraud. The assessor has no power, arbitrarily and without notice to the owner, to alter an assessment and materially increase the valuation. Is it to materially increase the valuation to take property worth nothing and increase it to the sum of $2,003,000?

Our supreme court has decided that a corporation has the same rights as an individual. According to the doctrine of these gentlemen, this court is bound to follow that decision. It was made since the Porter decision. They also decided that property in one county cannot be transported to another, under that clause of the constitution (which is a restriction) that the property must be within the body of the jurisdiction imposing the tax. The State court has decided every point in our favor since the Porter decision. Our court has decided that this State board of equalization can be reviewed; that it is a fraud to raise the valuation of property without notice to the owner; that where property has been assessed that had no value, the assessment is null and void, and that corporations have the same rights as individuals. What more do I want?

But why do they come before this court and say that this court must follow a State decision? It is because they want to select the decision for this court to follow. They select the most absurd decision in the reports of the State of Illinois. Is there anything so sacred about absurdity that this court must follow that decision in preference to others that have reason and argument upon their side?

And it is all in the name of what they are pleased to call State rights. I do not know that I am very orthodox on that question. I have wished all my life that I might stand in some court that would be governed by reason, by equity, and by justice. The doctrine of State rights never was appealed to in this world unless the man who appealed to it wanted to steal something. I have read the political and judicial history of this country to some extent, and I say that the first time the doctrine of State rights was appealed to, it was for the purpose of protecting the slave-trade until the year 1808. The next time, to protect the inter-State slave-trade. It was appealed to as a foundation for the fugitive-slave law. It was appealed to to fill the free Territories with bond-men and bond-women. It was appealed to in justification of secession and rebellion, and it is now appealed to, when confiscation, under the name of taxation, is desired. I defy the gentlemen to read the history of the country and show were this doctrine was ever appealed to except by somebody who wanted to rob somebody. It has been the bane of our country. It is and has been a fortress for injustice, slavery, and treason. I care nothing for the rights of the States, but everything for the rights of the people of the States.

If the case they have here was a just one, they would appeal to justice; if it was an equitable one they would appeal to equity; but as it is an outrage, and because they want to collect taxes on nothing, they appeal to State rights. We appeal to justice, to the principle of uniformity, and to this court.

As I said in the opening of this case, it was tried, argued, and argued again and again, before Judge Drummond of the Federal court at Chicago, and he decided, after having known as much about the facts, I think, as any of us ever will know, that you could not take real estate from one town and carry it over into another for the purpose of taxation, and that you could not tax what a man *owes;* in other words, that the poor-house was not the best place to raise a revenue. He decided that you might pay a tax on what you own, but not on what you owe. He decided, also, that a court or a *quasi* court was bound by the evidence in the case, and could not decide contrary to the evidence, and could not increase the valuation without notifying the owner. He also decided that uniformity includes modes as well as rates, and that property could not be classified according to owners.

It may also with propriety be stated, that several other cases depend upon the decision in this case. In all the cases I represent the stock was without value; and yet, in each case, an enormous value was placed by the board of equalization upon the stock. In the case of the Indianapolis, Bloomington, and Western Railroad, the stock was utterly worthless, and yet it was assessed at two hundred per cent. more than the tangible property. In the Peoria and Rock Island Railroad case the stock was without value, and yet it was assessed at one million seven hundred thousand dollars—several hundred thousand dollars in excess of the tangible property. In the Paris and Decatur Railroad case the same "uniformity" was observed.

All these cases are and were before Judge Drummond when this case was decided. In every case the stock was admitted to be worthless. In every case the valuation of the tangible property had been raised without notice, and contrary to the evidence.

In all these cases Judge Drummond decided:

First: That the revenue law of 1872 provides only for a tax by valuation.

Second: That the taxing power can only be exercised upon property within the jurisdiction of the body imposing the same.

Third: That the situs of real estate is where the real estate is.

Fourth: That to assess *nothing* at $2,000,000.00 is fraudulent.

Fifth: That the State board of equalization could not raise the valuation put upon the property by the corporation without notice.

Sixth: That the State board was bound by the evidence before it.

Seventh: That the rules adopted by the board to ascertain the value of the "capital stock, including the franchise," were fundamentally erroneous.

Eighth: That "uniformity" extends to and embraces modes as well as rates.

Ninth: That corporations have the same rights as individuals in this regard.

Tenth: That to place value upon nothing is a fraud, and that to raise valuation upon property without notice and contrary to evidence is another fraud.

The principles announced by Judge Drummond in his decision must be correct. There is no escape from the facts in this case, and I see none from the conclusions drawn from those facts by Judge Drummond.

This court is called upon to protect the property of non-residents in the State of Illinois. The court has jurisdiction of the parties, and all we ask is, that this august tribunal proceed to judgment in accordance with the principle of uniformity laid down in the constitution of Illinois.

Justice Davis

IN THE

United States Supreme Court.

OCTOBER TERM, 1875.

No. 702.

ISAAC TAYLOR, *Collector, Etc., et al., Appellants,*

vs.

WILLIAM TRACY,
JAMES F. SECOR,
Et al., Appellees.

PETITION AND SUGGESTIONS FOR RE-HEARING.

R. G. INGERSOLL,
Counsel for Appellees.

Transcript Company, Printers, Peoria, Ill.

United States Supreme Court.

OCTOBER TERM, 1875

No. 702.

ISAAC TAYLOR,
Collector Peoria County, et al.,
vs.
JAMES. F. SECOR,
WILLIAM TRACY, *et al.*

PETITION OF APPELLEES FOR A RE-HEARING.

After a careful reading of the Opinion delivered in this case, we are satisfied that in the arguments filed we failed to make ourselves understood by the Court. We are also satisfied that the Court have entirely overlooked some of the most important sections of the revenue law of 1872, and that a most material allegation of the Bill, admitted in the Answer, has been forgotten. We feel that there has been a mingling of the three cases, and that our

case has been decided principally upon the facts in the others.

We feel that great injustice has been done, partly through a failure on our part to render our objections to the law, and assessments made under it, clear, and partly from a confusion of facts produced by trying the cases together.

We deem it our duty, not only to our clients but to the Court, to submit the following points or suggestions.

I.

It is charged in the Bill that the act to fund and provide for the payment of railroad debts of counties, cities and towns, is unconstitutional and void, and that the taxes sought to be collected from the railway company under this law are illegal. The Answer admits that the act in question is void, and that the taxes are illegal in that regard, and yet, by the decision in this case, notwithstanding the admission in the Answer, that act is held to be constitutional and the taxes legal. The Answer not only admits the act void, but the Supreme Court of Illinois held the same in the case of *Ramsey* v. *Haegar*, 76 Ill., 432.

This tax, admitted to be illegal by the Answer, decided void by the Supreme Court of Illinois, amounts to just seven thirty-sixths of the whole tax.

By the opinion of this Court, we are compelled to pay nearly one-fifth of the whole tax, notwithstanding the fact that such tax is admitted by the Answer to be illegal, and so decided by the Supreme Court of Illinois.

That this is an oversight, we have no doubt. That it does us great injustice, is perfectly apparent. Upon this

point there can be no doubt, as the record is perfectly clear.

We ask the Court to look at page 10 of the printed record, commencing at the fifth line from the top, also at page 30 of printed record, commencing at fifth line below the figures 79, on side page.

The Court will see that appellants admit that only twenty-seven thirty-sixths of the tax is legal.

Under these circumstances, it is perfectly clear that a decision declaring the whole tax legal and ordering our bill dismissed, is erroneous.

The whole tax for 1873 was about $70,000. Seven thirty-sixths of this amount is admitted to be illegal. This amounts to nearly fourteen thousand dollars.

The appellants admit that about one-fifth of the tax enjoined ought to have been enjoined—that it was and is illegal, and yet this Court orders our bill dismissed. We feel certain that this point escaped the attention of the Court.

II.

The bill charges that the stock of the T. P. & W. Railway Company was, and is, wholly worthless. The evidence shows the same thing. Not only this; but counsel for appellants, during the argument of this case, in open court, admitted that the stock was and is utterly without value.

This worthless stock was assessed at $2,003,000. This constitutes nearly one-half of the assessment.

As a justification for this admitted outrage, it is held by the opinion filed, that although the stock was worthless still, the franchise might have been worth two millions of dollars.

With all deference to the Court, we propose to show that this is impossible, and to show this by other portions of the Opinion.

In the Opinion we find the following language:

"It is, therefore, obvious that when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises, for these are all represented by the value of its bonded debt and of the shares of its capital stock."

Admitting for the sake of the argument, this to be true, then we say that the fair cash value of the funded debt, added to the fair cash value of the shares of stock, is the true value of the road, including all its property, its capital stock and its franchises.

This being true, if the shares of stock are worthless, then the fair cash value of the funded debt is the true value of the road—all its property, its capital stock and franchises.

Is there any escape from this conclusion?

Now, when the value of a railroad is estimated—the value of the track, road-bed, side tracks, depots and rolling stock—is this railroad estimated and valued as a railroad, or as so much dirt and iron? We say that it is all valued as a railroad, and that the right to use it is included.

We say then that the total tangible property includes the franchise. No one ever dreamed of estimating the

value of a railroad apart from the right to use it. What is anything worth without the right to use it? In estimating the value of a house, do you exclude or include the right to live in it?

Suppose that the mortgage is foreclosed—the road sold. The purchaser obtains the property with the right to use it as a railroad. The right to use it is sold to pay the bonds. All that can be sold to pay the bonds is the tangible property with the right to use it.

The Board of Equalization estimated the tangible property at $2,629,367. Did this estimate include the value of the right to use this property as a railroad? There can be no doubt about this. This being so, the franchise was of necessity included in the estimate. To tax it again under the head of "capital stock including the franchise," is double taxation.

Where the bonded debt is so large that the entire tangible property, including the right to use it, is insufficient to pay it, the stock is of necessity worthless. If the stock is worthless, how much is the franchise worth to the stockholders?

Our argument has been entirely misunderstood by the Court, as is shown by the following extract from the opinion:

"If taxes were assessable alone on the value of the "capital stock and franchises of the corporation, cases "might be found where these were worth nothing, "and such companies would pay no tax even for their real "estate or personal property. And this is precisely the "main argument of counsel for the Toledo, Peoria & War-

"saw Railroad Company, in opposition to the law, and to "the rule of the Board of Equalization. But individuals "do not escape taxation on their real and personal property "because they are insolvent. In several of the states many "men in effect pay tax on their lots or lands, and on the "mortgage which covers it and exceeds it in value, and on "a large amount of personal property, while the mortgage "debt exceeds in amount all that they are worth in the "world. No state has ventured to establish the principle "of permitting its visible, tangible property to escape tax-"ation, relying solely on a tax imposed on the individual, "on the basis of his estimated wealth in excess of his debts."

In this, the Court is mistaken. No such argument was ever made by the counsel for the Toledo, Peoria & Warsaw Railway Company. No such doctrine was ever contended for by us. We admit that the railroad company must pay taxes on all its tangible property, when legally assessed. If a man has any property in his possession as owner, he must pay the taxes, no matter whether he has paid for the property or not. No one in his senses ever thought otherwise.

On page 31 of the printed argument filed by us in this case will be found the following:

"No one will contend that a private individual can be made to pay taxes for what he *owes*, though he must pay taxes on what he owes *for*."

The Court have exactly misstated our argument. We admit that we ought to pay all legally assessed taxes on the property, but not taxes upon the amount we owe for that prop-

erty. We insist that when the railway company pays taxes on all its tangible property, it pays taxes on all its franchises, for the reason that the value of the franchises enters into and becomes a part of the tangible property. Nothing in human experience can be any clearer than this.

We never dreamed of insisting that "taxes should be "imposed on the individual on the basis of his estimated "wealth in excess of his debts." We had almost as soon be charged with the commission of a crime as with making such an argument. On page thirty-six of printed brief filed by us in this case, occurs this passage:

"We all admit that taxes must be paid on "tangible property, whether the company is in debt "for such property or not; but we do not admit that "the company can be made to pay taxes on its debts—on "its property—on its capital stock, and on its franchises."

III.

Admitting for the sake of the argument (we hate to admit it for any purpose), that the rules laid down by the Board of Equalization are just and equitable, still the rules will not execute themselves. The Board of Equalization, under these rules, must find the *fair* cash value of the bonds —the *fair* cash value of the shares of stock, and also (if the board assesses the tangible property), the *fair* cash value of that.

In this case the bonded debt was and is greater than the value of the tangible property, including the right to use it as a railroad. This right to use it as a railroad is all the franchise there is. Nothwithstanding this, the Board of Equalization fixed the *fair* cash value of worthless stock

at over two millions of dollars. Can such action be justified by saying that the rules are fair, even if the stock is worthless?

Upon that point we find in the Opinion the following:

"The case of Toledo, Peoria & Warsaw Railway Company, as we have said, is used as an illustration of the inequality which this rule works, and which counsel say is forbidden by the constitution of the State, thus rendering the tax assessed against it void. That Company is insolvent and in the hands of a receiver. It is unable to pay any interest on its bonds. Its capital stock is of no value. But the Board of Equalization assessed the capital stock and franchise at $2,003,415, and its tangible property at $2,629,367, thus assessing a property which pays but little, if anything, beyond its running expenses, at the sum of $4,632,782. This sounds plausible, but it is nothing more."

We contend that this is not a fair presentation of our argument. We did not say that because the property yielded but little revenue that no tax should be paid; but we did say that when the Company could not pay the interest on its bonded debt, the franchise was without value to the Company. This must be so, unless the right to lose money is a valuable franchise. We admitted that a tax, when legally assessed, should and must be paid on the tangible property whether the Company could pay the interest on its debt or not. We contended that "where a tax is declared to be upon franchises and privileges granted, if there were no surplus earnings there could be no tax." The reason is perfectly manifest. The right to lose money is

of no value. We contend that this argument is not only *plausible*, but unanswerable.

This Court further say:

"Concede for the present that the capital stock is sunk and is of no value—concede that the funded debt of the company has at present no market value, or is unsalable, there remains what is valued or worth over $2,600,000 of real and personal property, which, like all other property of individuals or incorporations, ought to pay its proportion of the public burdens. There also remains the value of the franchise, which is not destroyed by the circumstance that the road does not pay interest on its debt. Does anybody believe that this debt is of no value—that the holders of it attach no value to this franchise? Are they willing to give up the right to operate the road, to receive freights and fares, to endeavor to make it pay something more than the mere value of the personal property of the track, the depots, the grounds, the rolling stock and other tangible property? Is it supposed by any one that they intend or will ever sell these separately or apart from the right to use them as a railroad? Why do not the bondholders sell all these things under their mortgage at auction, as a man would sell town lots and household furniture, and horses and carriages? The reason is too clear to escape observation. It is because in the case of the railroad there is attached to all this property and goes with it a privilege, a right to use it through the whole extent of the richest counties of Illinois, in transporting persons and property,

in a manner which adds immensely to its value when considered as so much iron, so much land, and so much personal property. By virtue of this privilege or franchise, this is all aggregated into a unit, well adapted to make money by its use in that way, with a chartered right to use it for that purpose. It is this *franchise* which the legislature of Illinois intended to tax, which it had a right to tax, and in taxing it committed no injustice, if it was fairly assessed, though the corporation which holds it may be so utterly bankrupt that it must necessarily pass from it into other hands. In those hands, disembarrassed of its overweight of debt, who shall say that it is not worth $2,000,000, and who shall say that such is not the real value now of this franchise?"

Concede that the funded debt is without value, or unsalable, how can the franchise be of value, when such franchise can be sold to satisfy the funded debt?

Concede that the stock is wholly sunk and of no value, how can the franchise, to remain totally insolvent, be of value to the company?

Concede that the tangible property is worth $2,600,000, is not the value of the franchise included in this valuation? Is there in the record any evidence that the tangible property was assessed as so much land and iron, without the right to use it as a railroad?

Has it been pretended by any one in the case that the tangible property was assessed as so much land and iron?

On the contrary, we say just as this Court say, and in their language: "*In the case of a railroad there is attached to all this property and goes with it, a privilege, a right to use it*

through the whole extent of the richest counties of Illinois, in transporting persons and property."

This fact, that the franchise inheres in the tangible property is given as the reason why holders of bonds do not sell the tracks, depots and bridges separately. If this is so, then we are right when we say, that when the Board of Equalization assessed the tangible property, the board necessarily included the franchise. It is also certain that the franchise is mortgaged to secure the bonds, and that the value of the franchise necessarily enters into the value of the bonds. It is also certain that where all the property, including the franchise, is not sufficient to pay the bonds, there is but *very* little franchise left to give value to the stock.

The right to use the property as a railroad is the franchise. This franchise is mortgaged to secure the bonds. This franchise was and is included in the assessment of the tangible property, and this Court allows it to be assessed again in connection with the stock.

We claim that this is illegal and unjust.

IV.

We objected to the assessment of the tangible property being raised by the Board of Eqalization without notice to the company. The Bill charges and the evidence shows that the board raised the valuations not only without notice, but adjourned within a few minutes after such action, so that the railway had no opportunity of being heard one way or the other. Upon this point this Court say:

"The statute requires the proper officers of the railroad companies to furnish to the State Auditor a schedule of the

various elements already mentioned as necessary in applying the statutory rule of valuation. It is charged that the Board of Equalization increased the estimates of value so reported to the auditor, without notice to the companies, and without sufficient evidence that it ought to be done, and it is strenuously urged upon us that for want of this notice the whole assessment of the property and levy of taxes is void.

"It is hard to believe that such a proposition can be seriously made. If the increased valuation of property by the board without notice is void as to the railroad companies, it must be equally void as to every other owner of property in the State, when the value assessed upon it by the local assessor has been increased by the Board of Equalization. How much tax would thus be rendered void it is impossible to say. The main function of this board is to equalize these assessments over the whole State. If they find that a county has had its property assessed too high in reference to the general standard, they may reduce its valuation; if it has been fixed too low they raise it to that standard. When they raise it in any county they necessarily raise it on the property of every individual who owns any in that county. Must each one of them have notice and a separate hearing? If a railroad company is by law entitled to such notice, surely every individual is equally entitled to it. Yet if this be so, the expense of giving such notice, the delay of hearing each individual, would render the exercise of the main function of this board im-

possible. The very moment you come to apply to the individual the right claimed by the corporation in this case, its absurdity is apparent. Nor is there any hardship in the matter. This board has its time of sitting fixed by the law. Its sessions are not secret. No obstruction exists to the appearance of any one before it to assert a right, or resent a wrong, and in the business of assessing taxes, this is all that can be reasonably asked.

"As we do not know on what evidence the board acted in regard to these railroads, or whether they did not act on knowledge which they possessed themselves, and as all valuation of property is more or less matter of opinion, we see no reason why the opinion of this Court, or of the Circuit Court, should be better, or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter."

We certainly failed to make our position understood, if anything we said is capable of such a construction.

There is a town board before which every individual can go and show that his property has been assessed too high, or that of his neighbor too low. A corporation cannot go before this board.

There is an appeal from the Town Board to the county board for an individual. A corporation has no such right. The object of the Town Board is to have all the property in the town assessed by the same standard. The object of the County Board is to have all the property in the county assessed by the same standard. The object of

the State Board is to have all the property of individuals in the whole State assessed by the same standard.

The Court will see that it makes no possible difference what the standard is, so it is the same over the whole State. All this is for the benefit of individuals; but not for corporations. The assessment of individuals' property cannot be raised without notice—that of a corporation can. Is such taxation uniform?

In the case of the individual the standard of assessment is equalized by the State Board without notice; but in the case of the corporation the assessment is doubled, or quadrupled without notice, and the standard changed besides.

It is claimed that we had the right to go before the Board of Equalization and "assert a right or resent a wrong." We sent to the Board a sworn valuation of the property. For all we knew, that valuation was perfectly satisfactory. We received no notice to the contrary. The evidence shows that we did not know that the assessment had been doubled until after the Board adjourned.

Why should we go there to resent a wrong before any wrong had been done? Why should we go and assert a right that had not been disputed? The wrong was perpetrated, as the proceedings of the Board on file in this case show, only a few moments before the final adjournment of the Board. The Board was in session for several weeks. Was it the duty of railway companies to sit on the steps of the State House week after week to assert a right not disputed, or resist a wrong not perpetrated? Suppose they had all been there, what could they have done? The wrong to be resisted was not made known until the Board adjourned. What could the railway companies have done?

As a matter of fact, there was no opportunity to assert a right or resist a wrong. Raising the assessment without notice was an outrage, for which there is no redress except in the courts. If this redress is denied, the railways are at the mercy of a Board not amenable to the laws, and whose action cannot be reviewed.

V.

If we understand the opinion, the right to assess the franchise of the Toledo, Peoria & Warsaw Railway Company is justified by the second clause of the ninth article of the Constitution, giving power to tax peddlers and others.

It is admitted that such tax must be by general law, and uniform as to the class upon which it operates. In our case the stock is admitted to be worthless. The Board of Equalization assessed the stock "including the franchise," at $2,003,000. As the stock was worthless, the franchise was assessed at $2,003,000. The evidence on file in this case shows that no other road in the State was assessed on its franchise $2,003,000.

Where is the uniformity?

It is also in evidence that twenty-one railroad companies were entirely exempted from franchise tax.

Can this be called uniform?

Suppose a law passed subjecting all property of non-residents to treble taxation, would this not be a general law uniform as to the class upon which it operated? Would such a law be constitutional?

Under this section of the constitution, a tax upon peddlers must be uniform on all peddlers, or else the peddlers must be classified and the tax uniform upon all peddlers in

each class. The same must be true of railroads. The railroads have not been classified. The law of 1872 does not pretend to classify them. This being the case, this franchise tax must be uniform as to the class upon which it operates. All the railroads are yet in one class, therefore the tax must be uniform upon each, or it is unconstitutional. The railways are all in the same class, and yet this tax is not uniform, unless a different tax in each case makes uniformity.

Under this clause, according to the opinion in this case, the State has a right to tax the franchises of railroads. Are these franchises taxed as property? If they are taxed as property, then they should be assessed as other property is assessed—in the same way, and by the same standard.

Is it any consolation to a man whose property has been assessed at four times its value, to be told that taxes are levied upon such assessment at the same *rate* they are levied upon his neighbor's property, that has been assessed at only one-fourth its value? In our case, worthless stock was assessed at $2,003,000. The fact that we are only compelled to pay the same *rate* paid upon actual valuable property has nothing to do with the question. The fact that the rules of the Board of Equalization are "about as good as any," seems to us no reason for compelling us to pay taxes on $2,003,000 worth of *nothing*. It does not seem that the Supreme Court of the United States can decide that worthless property can be legally assessed at $2,003,000.

There is no difference for the purposes of taxation between that which is worthless and that which does not exist. This Court, then, in effect holds that an assessment of the non-existent — of vacuum — of nothing, is legal as against a railway corporation.

If the stock "including the franchise" had been assessed at two hundred millions, according to the opinion in this case, no Court could have prevented the consummation of the fraud.

Certainly it is just as legal to assess the *worthless* at two hundred million as at two million. If a Court is powerless in one case it is in the other. To us it seems a public calamity that the highest tribunal in the United States should declare itself incapable of protecting the property of non-residents from confiscation by a state.

VI.

Another reason given for reversing the case and ordering the bill dismissed, is that we failed to pay or tender the legal tax.

We claimed when the bill was filed, and still claim, that the whole tax was illegal. We offered in the bill to pay any portion of the tax found to be legal.

Suppose the Board of Equalization had made no assessment of our property. Suppose the County Collectors had filled out tax warrants themselves and had then seized our property, could they have been enjoined? Could it be said that we had some property, and therefore must pay some tax? No matter how much property an individual has, he is not required to pay any tax, unless such tax has been imposed according to law.

Our revenue law provides that where there is a failure to levy a tax upon property according to law, and the property for such reason escapes taxation one year, it can be re-assessed afterwards for that year. The State does not exhaust its power to assess legally by having assessed ille-

gally; but the tax can be enjoined unless the assessment and levy are legal.

We claimed in our bill that the whole tax was illegal. The Attorney General by his answer, admitted that seven thirty-sixths of the tax was illegal. In spite of this admission, this Court holds that it is all legal, and orders the bill dismissed. Surely this must be erroneous.

Upon this branch of the case, we find the following in the opinion:

"But let us suppose that the complaints made in these cases against the taxes were well founded; that the mode adopted by the Board of Equalization to ascertain the value of the franchise and capital stock is not the best mode; that it produces unequal and unjust results in some cases; that the same is true of the mode of ascertaining the basis of assessment for the taxation of municipalities; that the Board of Equalization increased the entire assessment on each company without sufficient evidence; in short, let us suppose that in these and many other respects the proceedings were faulty and illegal. Does it follow that in every such case a court of equity will restrain the collection of the tax by injunction, or will enjoin the collection of the whole tax when it is obvious that in justice a large part of it should be paid, and if not paid, that the complainant escapes taxation altogether?"

If we suppose the complaints made to be well founded, we then admit that the stock "including the franchise," had no value over and above the assessed value of the tangible property — that the assessment of the tangible

property was doubled without notice — that the result was unjust — that the Board acted contrary to the evidence, and that the proceedings were "faulty and illegal." How it is possible to hold that constitutional which is admitted to be unjust and illegal, is beyond our comprehension. The only reason given is that we would escape taxation altogether. This is a mistake, as the revenue law provides for a re-assessment and levy. The reason failing, the conclusion must fail also.

VII.

We still insist that a court of equity has the power to enjoin the collection of the taxes in this case.

In the opinion filed, reference is made to the laws of the United States upon this question. The government of the United States has provided for appeals within the departments.

Upon this question of jurisdiction it is held in the opinion filed that "No court of equity will allow its injunction to issue to restrain their action, except where it may be necessary to protect the citizen whose property is to be taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury, or when the property is real estate, throw a cloud upon the title of complainant before the aid of a court of equity can be invoked." So, in the case of *Hannewinkle* v. *Georgetown*, the Court says: "It has been the settled law of this country for a great many years, that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax, cannot be maintained. There must be an allegation of fraud, that it

creates a cloud upon the title, that there is apprehension of a multiplicity of suits, or some cause presenting a case of equity jurisdiction."

In the bill filed in this case it is charged and shown, *first*, that appellees had no adequate remedy at law; *second*, that the enforcement of the tax would lead to a multiplicity of suits; *third*, that it would produce irreparable injury; *fourth*, that the Board of Equalization acted fraudulently. The Court will see that we brought ourselves exactly within the most rigid rules.

By the Constitution of Illinois, we are prevented from suing the State. If the illegal tax is paid, our only remedy is to sue numberless irresponsible collectors. This is equivalent to no remedy.

VIII.

In an ordinary case, under ordinary circumstances, we should hesitate long before filing a petition for a re-hearing. The amount involved, the importance of the questions presented, and the fact that the decision rendered amounts to a confiscation of the property, are the reasons we offer for presenting this petition.

We feel that great injustice will be done; that a decision fraught with danger to most important interests is about to become the supreme law, and that the property of corporations is to be subjected to popular plunder. Upon the decision in this case depends those of the Indianapolis, Bloomington & Western, Peoria & Rock Island, Illinois Midland, and several others. In all these cases the stock was wholly worthless, and yet it was assessed at about three times as much as the tangible property.

In the case of the Peoria & Rock Island, the stock

being without value, was assessed at par. In the case of the Indianapolis, Bloomington & Western, the worthless stock was assessed at about three times as much as the tangible property. If there is no redress in the courts, as at present organized, for wrongs like these, other tribunals ought to be established for the protection of property.

The theory of taxation is that the State protects the property, and that the tax is a payment for the protection furnished by the State. In our case the theory of protection is a failure. We want no protection for worthless stock — no protection for a franchise to remain bankrupt, and no protection for the privilege of losing money. All we ask is to be put on an equality with individuals — to pay our fair proportion of the taxes — to bear our fair part of the public burden, and, like individuals, to receive protection in consideration of taxes paid.

We most respectfully ask that a re-hearing be granted in this case.

R. G. INGERSOLL,
Of Counsel for Appellees.